



Whether the FERC would preempt the Georgia Commission if the Georgia Commission adopted a plan that provided for the permanent assignment of the interstate capacity assets currently held by Atlanta Gas Light Company to certificated natural gas marketers and placed conditions upon that assignment of the interstate capacity assets.

As stated in the Petition, since 1997, the GPSC has been charged with the implementation and administration of the state's "Natural Gas Competition and Deregulation Act," O.C.G.A. § 46-4-150 *et seq.* ("Deregulation Act"). Pursuant to the Deregulation Act, Atlanta Gas Light Company ("AGLC"), elected to unbundle its gas distribution services from its gas sales services and a number of gas marketing companies received certificates of authority from the GPSC to sell gas to retail customers in Georgia through AGLC's distribution system. The Deregulation Act has required 1) AGLC to "continue to be responsible for acquiring and contracting for the interstate capacity assets necessary for gas to be made available on its system, whether directly or by assignment to marketers...unless determined otherwise by the [GPSC]..." (O.C.G.A. §46-4-155(e)(2)), and 2) the GPSC to approve a capacity supply plan for AGLC that includes the "array of interstate capacity assets ... to meet [firm customer] requirements" and the "portion of the interstate capacity assets which must be retained and utilized by the electing distribution company [AGLC] to manage and operate its system." O.C.G.A. §46-4-155(e)(6). Accordingly, pursuant to the Deregulation Act and in accordance with the FERC capacity release rules, AGLC has released capacity to marketers on a monthly and long-term basis based on the respective marketer's market share of the Georgia retail sales market.<sup>2</sup>

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<sup>2</sup> AGLC retains a portion of its interstate capacity for system management, operations, and balancing purposes.

In 2002, the Georgia legislature enacted the Natural Gas Consumers' Relief Act ("Relief Act"). As part of the Relief Act, the Georgia legislature obligated the GPSC to hold a hearing no later than July 1, 2003 to consider plans for the assignment of interstate capacity assets held by the electing distribution company, AGLC. See O.C.G.A. § 46-4-155(e)(13).

In June 2003, the GPSC held a hearing in GPSC Docket No. 16682-U to consider plans for the assignment of interstate capacity assets held by AGLC. At that hearing, the GPSC considered competing proposals regarding how capacity should be released or assigned to marketers. While Georgia Commissioners were interested in considering at that hearing the potential for benefits to consumers of assigning capacity to marketers and of allowing marketers to contract for their own capacity, certain threshold jurisdictional concerns, including a FERC jurisdictional issue, were raised at the hearing. Until those threshold concerns are adequately addressed, the GPSC's ability to fully consider the potential for benefits to consumers of assigning capacity to marketers is limited.

## **Discussion**

As stated above, the GPSC is interested in considering the potential for benefits to consumers of assigning capacity to marketers and of allowing marketers to contract for their own capacity. Arguments were made during the hearing in GPSC Docket No. 16682-U that assigning capacity to marketers and allowing them to contract for their own capacity could encourage more competition between marketers, and could result in lower prices, more competitive options, and better service to consumers. The GPSC is very interested in pursuing policies that could improve and enhance the competitive retail natural gas market in Georgia for the benefit of retail natural gas consumers.

The GPSC, however, is also concerned with ensuring that adequate capacity is available in Georgia to meet the needs of customers. During the hearing in GPSC Docket No. 16682-U, a concern was raised that if the GPSC approved assignment of capacity to a marketer that under FERC rules and orders it could arguably result in a relinquishment of the right of AGLC or of the GPSC to recall such capacity as deemed necessary by the GPSC for the benefit of the market and Georgia consumers. The argument was also made that this could be the case even if the GPSC expressly included conditions upon that assignment of capacity that were agreed to by the marketer. Then, if such marketer were leaving the state, were unable to pay its bills, or were to file for bankruptcy, AGLC arguably could not recall such capacity and the GPSC arguably could not force the marketer to return the capacity so that the capacity would continue to be available to meet the needs of Georgia consumers.

Until FERC removes this uncertainty, it will be very difficult, if not impossible, for the GPSC to continue with its important inquiry into the potential for benefits to Georgia consumers from assignment. Enhancing competitive markets is a goal that both the Commission and the GPSC share and the GPSC believes that policies that could help achieve that goal should be thoroughly explored.

## **Conclusion**

Thank you for your consideration of these comments.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Atlanta, GA this \_\_\_\_ day of December 2003.

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