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EXECUTIVE SECRETARY
G.P.S.C.

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE McALISTER
EXECUTIVE SECRETARY

Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.ga.gov

Docket No. 42744

In Re: Notice of Inquiry on Georgia Senate Bill 2

DOCKET# 42744
DOCUMENT# 180784

ORDER IMPLEMENTING SENATE BILL 2

BACKGROUND AND JURISDICTION

Georgia Senate Bill 2 amended Chapter 3 of Title 46 relating to electrical service so as to allow electric membership corporations ("EMCs") to engage in certain activities in order to facilitate the provision of broadband services. An EMC that has a broadband affiliate that provides retail broadband service shall develop and maintain a cost allocation manual "describing the electric membership corporation's methods of cost allocation and such other information and policies reasonably required to ensure compliance with [Title 46, Chapter 3, Article 4]," and the Georgia Public Service Commission ("Commission") is charged with approving the manual. O.C.G.A. § 46-3-200.2(b)(5). Senate Bill 2 provides the Commission with jurisdiction over EMCs that have broadband affiliates that provide retail broadband services, as well as the broadband affiliates themselves, to enforce compliance with the provisions of O.C.G.A. § 46-3-200.2. See O.C.G.A. § 46-3-200.2(c). The Commission is also charged with providing for an expedited adjudication of any complaint as to a failure to comply with O.C.G.A. § 46-3-200.2. *Id.*

On October 15, 2019, the Commission issued a Notice of Inquiry seeking comments from interested parties on Georgia Senate Bill 2. The Notice of Inquiry included the following five questions:

1. With regard to the cost allocation manual identified in O.C.G.A. § 46-3-200.2(b)(5), what types of rules should be included for the pricing of transactions between an electric membership corporation and its gas affiliates and broadband affiliates? Your response may discuss the general framework and subject matter of the rules and may also suggest specific rules that should be incorporated.
2. What should the cost allocation manual include to demonstrate compliance with O.C.G.A. § 46-3-200.2(b)(5)(B)? (type of information, level of detail, etc.)
3. What should the cost allocation manual include to demonstrate compliance with O.C.G.A. § 46-3-200.2(b)(5)(C)? (type of information, level of detail, etc.)

4. With regard to the expedited adjudication of complaints for failure to comply with O.C.G.A. § 46-3-200.2, are there any specific procedures that the Commission should follow?
5. What additional procedures or issues should the Commission examine in regard to implementing and enforcing the provisions of Georgia Senate Bill 2?

On or before November 15, 2019, the following parties submitted comments in response to the Notice of Inquiry: BellSouth Telecommunications, LLC, d/b/a AT&T Georgia (“AT&T Georgia”), CenturyLink Communications, LLC, (“CenturyLink”), Georgia Cable Association, Inc., (“GCA”), Georgia Electric Membership Corporation (“GEMC”), Georgia Telecommunications Association (“GTA”), Public Service Telephone Company (“PSTC”), and Windstream¹, (collectively, the “Interested Parties”). The following four parties submitted reply comments on December 20, 2019 in response to the Commission’s December 19, Order: AT&T, GCA, GEMC and GTA.

Staff presented recommendations on each of the proposals submitted by the parties to each question in the Notice of Inquiry. In developing its recommendation, Staff evaluated each proposal submitted by a party to determine whether the proposal was authorized by the statute either expressly or by fair implication. *See, Georgia Power Co. v. Georgia Pub. Serv. Comm’n*, 211 Ga. 223, 226 (1954).

The Interested Parties ultimately reached a compromise on issues and procedures related to Senate Bill 2 and presented it to Staff on March 11, 2020. Staff adopted the compromise in its entirety with one exception² and presented it to the Commission for approval. The Commission adopts the Staff proposal with one modification addressed herein. Once the Commission and the parties have gained experience in implementing this Order, it may be necessary or appropriate to promulgate rules to further support this Order. Nothing in this Order shall be construed to excuse the compliance with the plain language of Senate Bill 2 and is only intended to implement the requirements of Senate Bill 2.

The requirements in O.C.G.A. § 46-3-200.2(a)(1) through (4) and (b)(1) through (5) apply to those EMCs with broadband affiliates that provide retail broadband service. This order will simply refer to “EMCs” when discussing those companies bound by these subsections.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Commission has reviewed the recommendations of Staff and the Interested Parties and reached the following findings for each of the questions presented in the Notice of Inquiry.

¹ Comments were submitted jointly by Georgia Windstream, LLC; Windstream Accucomm Telecommunications, LLC; Windstream Communications, LLC; Windstream Georgia Communications, LLC; Windstream Georgia Telephone, LLC, Windstream Georgia, LLC and Windstream Standard LLC (collectively “Windstream”).

² Staff and the Interested Parties did not agree as to the filing of non-affiliate Pole Attachment Agreements.

I. With regard to the cost allocation manual identified in O.C.G.A. § 46-3-200.2(b)(5), what types of rules should be included for the pricing of transactions between an electric membership corporation and its gas affiliates and broadband affiliates?

With respect to Question 1 of the Notice of Inquiry, the Commission finds and concludes as follows:

1.

No costs from any proposed transaction forming the broadband affiliate shall be borne by EMC ratepayers.

2.

Transactions of the type listed in O.C.G.A. § 46-3-200.2(b)(5)(C) between the EMC and the broadband affiliate should be at the same rates and on the same terms and conditions as any other similarly situated retail customer or communications service provider.

3.

The duty set forth in O.C.G.A. § 46-3-200.2(b)(4) of an EMC to inform customers of competitive broadband providers applies to EMC customer service representatives and other positions that are customary points of sale.

4.

Cost Allocation Manuals shall be publicly filed in a generic docket designated by the Commission or, absent such designation, in Docket No. 42744.

5.

The Cost Allocation Manual shall contain information sufficient to demonstrate compliance with the statutory competitive safeguards. Also, EMCs should file with the Commission in the docket referenced in paragraph 4 any time there is an update to the Cost Allocation Manual.

6.

Interested parties shall have 14 days from the date that the Cost Allocation Manuals are filed with the Commission to review and submit comments. Nothing herein shall prevent a party from raising a compliance objection after the 14-day period.

7.

An EMC shall file a Cost Allocation Manual that plainly discloses the method used to determine the amounts the EMC charges or otherwise imputes to its broadband affiliate for access to poles, ducts, conduits and easements (including make-ready work). The Cost Allocation Manual shall account for pole use/space costs as well as other pole access costs. EMCs should also describe the methods of cost allocation for other rates. The actual charges and amounts imputed may ultimately have to be reviewed to ensure compliance with the article, and regardless of whether the actual amounts are included in the Cost Allocation Manual, the Commission reserves the authority to review or require the production of any necessary supporting information, including the actual charges for any service and the amounts imputed.

An EMC with a broadband affiliate shall file with the Commission, either as part of the CAM or separately in this docket, its pole attachment agreement with its affiliate. The Commission does not require at this time the filing by an EMC of its Pole Attachment Agreements with communications service providers not affiliated with the EMC, but an EMC with a broadband affiliate shall make these readily available to the Commission Staff for review offsite at the EMC's office, the offices of Georgia EMC, or through an online portal. The Commission strongly encourages that the Affiliate Pole Attachment Agreement be made available through an online portal for Staff's review. Additionally, an EMC with a broadband affiliate shall file either in the Cost Allocation Manual or in this same Docket a summary table that lists all of the charges, space used, and other factors upon which the charges or imputations are based, derived from the EMC's prior year's pole attachment agreements with other Communications Service Providers. The EMC shall not identify the Communications Service Provider by name in such summary table. A Protective or Non-Disclosure Agreement will be negotiated and mutually agreed upon between the parties for reviewing the original and updated Affiliate Pole Attachment Agreements and summary tables. If the parties are unable to agree on the terms of such Protective or Non-Disclosure Agreement, Staff will resolve the dispute and present to the Commission the terms of agreement for Commission approval.

8.

The EMC shall provide access to its poles, ducts, and conduits, and easements to all communication service providers on rates, terms and conditions that are just, reasonable and nondiscriminatory.

9.

The Commission and its Staff have the right to access the books and records of an EMC with a broadband affiliate that provides retail broadband service and those of the broadband affiliate. The Commission encourages the parties to enter into Non-Disclosure Agreements. If the parties do not enter into Non-Disclosure Agreements, then the Commission's Trade Secret Rule, 515-3-1-.11, would apply for information filed with the Commission.

10.

The Commission adopts the following general rules: (1) full allocation of costs for each EMC affiliate activity, including regarding any shared services; (2) the requirement for market-rate loans among affiliates except as otherwise permitted by O.C.G.A. § 46-3-200.2(a)(4); (3) maintenance of separate books and accounts, subject to production to and inspection by the Commission to ensure compliance; and (4) the filing of an annual certification confirming rule compliance by the EMC and its affiliate. A fully distributed cost model is a methodology that requires an EMC to assign direct costs attributable to its broadband service to its broadband affiliate and to apportion shared costs between energy and broadband services where there is a cost-causal link.

II. What should the cost allocation manual include to demonstrate compliance with O.C.G.A. § 46-3-200.2(b)(5)(B)?

With respect to Question 2 in the Notice of Inquiry, the Commission finds and concludes as follows:

1.

The Cost Allocation Manual shall explain the methodology supporting the EMC's cost allocations with sufficient specificity to confirm that the allocation is based on appropriate rationale and that the EMC has accurately allocated its costs to provide broadband.

2.

The Commission reserves the right to review the Cost Allocation Manual at future times in its discretion.

3.

EMCs shall submit an annual certification, attested to by a company officer, stating that:

- i. The Cost Allocation Manual is complete, accurate and that it allocates all costs in compliance with the Georgia law and Commission regulations prohibiting cross-subsidization.
- ii. There have been no changes to the Cost Allocation Manual other than any update filings made during the year.
- iii. The EMC has not conditioned the receipt of electricity services upon, nor provided more favorable terms for, customers who also take its affiliate's broadband service.
- iv. The attesting company officer has included with the certification a table, filed as a confidential trade secret, that lists all of the EMC's prior-year's pole attachment charges for each company, together with space and other factors upon which the charges are based.

4.

EMCs shall submit an annual certification, attested to by an independent accountant, stating that the EMC has complied with the Cost Allocation Manual.

III. What should the cost allocation manual include to demonstrate compliance with O.C.G.A. § 46-3-200.2(b)(5)(C)?

With respect to Question 3, the Commission finds and concludes as follows:

1.

The Cost Allocation Manual shall identify all affiliates of the EMC and allocation of all assets, employees and services provided between the EMC and its broadband affiliate.

2.

The EMC shall establish procedures for notifying prospective customers of competing broadband providers and file them with the Commission under this Docket. The procedures shall include the method(s) by which competing broadband providers may notify the EMC of the availability of that competitor's broadband services, and any other procedures necessary to demonstrate compliance with § 46-3-200.2(b)(4).

IV. With regard to the expedited adjudication of complaints for failure to comply with O.C.G.A. § 46-3-200.2, are there any specific procedures that the Commission should follow?

With respect to Question Four, the Commission finds and concludes as follows:

1.

Senate Bill 2 requires the Commission to provide for an expedited adjudication of any complaint as to a failure to comply with this Code section and may engage an administrative law judge for purposes of such adjudication. Therefore, complaints should be resolved within 90 days; however, such deadline is advisory and not mandatory.

2.

As part of the complaint resolution procedure, the Commission Staff shall have the authority to issue discovery and parties shall have access to such discovery responses.

3.

The Commission adopts the following timeline with respect to resolution of complaints:

Day 0:	Complaint is filed.
Day 7:	Staff issues discovery to EMC and/or complainant.
Day 14:	Responses due to discovery. Answer due to complaint.
Day 21:	Complainant submits evidence.
Day 28:	EMC submits evidence.
Day 35:	Simultaneous briefs.
Day 42:	Staff makes its decision.
Day 49:	Either party may seek full Commission review of Staff decision. Appealing party's brief must be filed along with its appeal. If no appeal sought within seven days of Staff decision, then Staff decision stands.
Day 56:	Appellee files response brief.
Day 63:	Appellant files reply brief.

Days 66-77: Staff provides back up for committee (This depends on the timing of the reply brief. If the reply brief falls on the Friday before back up is due, or any time sooner, Staff will provide back up for the committee the following Thursday (i.e. the committee six days after back up is due). This is with the understanding that Staff may not always be able to provide back up on Monday morning when it is typically prepared, but Staff will have the back up available to Commissioners and parties prior to committee. If the reply brief is filed on the Monday prior to committee (i.e. three days before the committee is due), then Staff will provide back up for the following round of committees. In such an instance, Staff back up will be provided two weeks after the reply brief is due.)

Days 69-80: The matter is on committee.

Days 74-87: The Commission votes on the matter at its Administrative Session.

In the event that the ability to place an item on an Administrative Session within 90 days is affected by there being more than two weeks between regularly scheduled Administrative Session, the Commission may decide to schedule a Special Administrative Session and/or a Special Telecommunications Committee meeting in order to render a decision within 90 days.

4.

Senate Bill 2 allows for, but does not require, assignment of case to an administrative law judge to serve as a hearing officer. At this point, the Commission finds it is reasonable to apply a flexible process. The flexible process would begin with Staff making an initial informal determination that a party could seek to appeal to the Commission. Either the party filing the complaint or the EMC could request or Staff can decide that the matter be heard initially by the Commission. If the matter is heard initially by the Commission, Staff may participate before the Commission in any evidentiary hearings and make a recommendation.

Alternatively, if the matter is informally decided by Staff, then the submission of evidence will be handled by a paper hearing. If the matter is decided by the Commission, then the question of whether there will be a live hearing will be controlled by O.C.G.A. § 50-13-15(a) (“[W]hen a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.”). If no party requests that the matter be heard initially by the Commission, then the evidence and arguments on appeal to the Commission will be limited to what was raised before Staff during the informal resolution.

5.

Senate Bill 2 does not provide for discovery; however, the Commission finds that it is reasonable for there to be some exchange of information between the parties. The Commission authorizes Staff to issue discovery under the Georgia Civil Practice Act. Parties may submit discovery to Staff within three business days of filing a Complaint, and Staff determines whether to issue such discovery. Alternatively, the parties may agree to limited discovery on a case-by-

case basis, and the discovery could be issued directly from the complainant to the EMC. It is also reasonable to direct parties to enter into a standard non-disclosure agreement agreed upon by all parties.

V. What additional procedures or issues should the Commission examine in regard to implementing and enforcing the provisions of Georgia Senate Bill 2?

With respect to Question 5, the Commission finds and concludes as follows:

1.

EMCs shall file notice with the Commission in this Docket of any proposed financing arrangements within 14 days of consummation of the financing. The EMC should identify whether the loan is below market, and, if so, how the costs will be imputed. The EMC should also identify whether the loan is part of a broadband program. If the funding is from a program that is intended to support the deployment of broadband facilities or broadband services, then the requirement that the EMC or its broadband affiliate impute the difference between market rates and the below-market funding into the costs of the broadband facilities and services does not apply. O.C.G.A. § 46-3-200.2(a)(4).

2.

An EMC shall provide notice of creation of a broadband affiliate. The EMC must file articles of incorporation of the broadband affiliate with the Commission within 14 days of the effective date of such articles of incorporation.

WHEREFORE IT IS ORDERED, that all findings, conclusions, and statements made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, and statements of regulatory policy of this Commission.

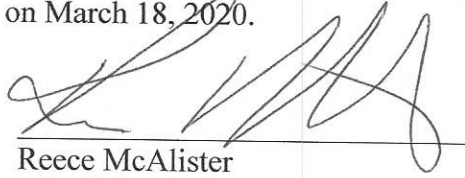
ORDERED FURTHER, that the Commission adopts the Staff recommendation proposed as modified herein as a fair and reasonable resolution of the issues in Docket No. 42744 subject to the terms and conditions herein.

ORDERED FURTHER, that EMCs shall abide by the terms and conditions as set forth herein.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose on entering further Order or Orders as to this Commission may seem just and proper.

The above by action of the Georgia Public Service Commission in Administrative Session on March 18, 2020.



Reece McAlister
Executive Secretary

4-21-20
Date



Chuck Eaton
Chairman

4/21/20
Date