

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST OF)	
ATLANTA POWER COMPANY TO ISSUE A)	CASE NO. ATL-E-02-1
PROMISSORY NOTE IN THE AMOUNT OF)	
\$34,000)	ORDER NO. 29059
)	

On May 23, 2002, Atlanta Power Company requested authority to execute a Promissory Note in the amount of \$34,000 payable to its counsel, Givens Pursley LLP. The purpose of the note is to pay Atlanta Power's past due amounts for legal services provided by Givens Pursley. The law firm maintains that Atlanta Power currently owes it approximately \$69,000 (including interest) for legal services and costs undertaken to acquire a Federal Energy Regulatory Commission (FERC) license for the utility's hydroelectric facility located at Atlanta, Idaho. The utility and its counsel assert that the note will allow immediate payment to Givens Pursley and represents a discount on the outstanding bill by waiving the accrued interest on the past due amounts. After reviewing the draft Promissory Note and the Staff's comments, we approve the Note as conditioned below.

THE PROMISSORY NOTE

Under the terms of the draft Promissory Note, Atlanta Power shall pay approximately 24 monthly installments of principal and interest in the amount of approximately \$1,636.46 until the Note's maturity date of May 1, 2004. The interest rate on the Note will be 14%. See Note ¶ 1.3. The Note also provides that Atlanta Power has the right to make prepayments at any time without penalty. *Id.* at ¶ 2. All payments made under the Note will first apply to fees and charges (including late charges, attorneys fees and costs), then to interest, and then to principal. *Id.* at ¶ 1.3.

The Promissory Note is to be secured by a separate "Lock Box Agreement" to be executed by the utility and the payee. *Id.* at ¶ 9. A Lock Box Agreement is an agreement that generally prescribes the order or priority of expense payments made from the utility's accounts receivable and makes those payments. The Lock Box would become effective only upon a default in making the monthly payment of principal or interest when due. The Lock Box Agreement would provide that customer payments due Atlanta Power be paid into the Lock Box.

All disbursements from the Lock Box would be made pursuant to pre-set provisions of the Lock Box Agreement. Although the exact terms of the Lock Box have not been reduced to writing, the Staff, the utility and the broker that will arrange the resale did agree that the Lock Box (if necessary) would operate in the following manner.

- (1) First, a \$2,000 reserve will be maintained in each and every month for the purpose of renting and operating a back-up generator (if needed by the utility);
- (2) Next, an additional \$2000 reserve will be maintained in each and every month for the purpose of making the payments due (by the due date) for applicable insurance, property taxes, Forest Service special use permits, IPUC fees, and the monthly minimum income tax payable by Atlanta Power;
- (3) Next, pay \$100 monthly toward the Water Resources Loan amount outstanding;
- (4) Next, pay \$555.10 monthly toward the Energy Loan amount outstanding (loan for water diversion bladder);
- (5) Next, pay the monthly installment on the Promissory Note by the due date established. The amount may vary but is estimated to be approximately \$1,636.46; and
- (6) The remaining balance of the Lock Box funds be available to Atlanta Power for payment of other operating expenses.

STAFF COMMENTS

After reviewing the Promissory Note and the suggested terms for the Lock Box, Staff asserted that the estimated monthly payment of \$1,636.46 is reasonable if Atlanta Power appropriately focuses on monthly cash management. Based upon Atlanta Power's monthly cash flow during calendar year 2001, Staff determined that the minimum revenues it received in any one month during the year was approximately \$4,700. The Staff's audit showed that the Company's total annual revenues during calendar year 2001 were \$63,794. Consequently, Staff determined that there was sufficient monthly cash flow to meet the estimated monthly payment contemplated in the Promissory Note.

Staff also recommended that the 14% interest rate of the Note not be utilized to establish customer rates. The Staff asserted that Atlanta Power's return on equity should be the maximum rate allowed for ratemaking purposes. The Staff also recommended that paragraph 9

of the Promissory Note be modified to reflect when the Lock Box Agreement would become effective. Staff recommended that the Lock Box Agreement not be used except when the utility defaulted on the Note. As previously mentioned, the Staff also agreed to the proposed Lock Box provisions discussed above. The Staff proposed that the following language be added to paragraph 9 of the Promissory Note:

At the time of noticing a default, the Idaho Public Utilities Commission will be simultaneously notified of the default. This notice must be provided at least fourteen (14) days in advance of the establishment of the Lock Box terms. The terms for payment from the Lock Box shall be approved by the IPUC prior to implementation.

Finally, the Staff also recommended that copies of all executed versions of the Promissory Note and any and all renegotiated or resale contracts for the Note be provided to the Commission.

DISCUSSION

Having reviewed the draft Promissory Note and the comments of the Commission Staff, we approve Atlanta Power's issuance of a Promissory Note in the amount of \$34,000 as conditioned below. We agree with the Staff's recommendation that the Note's 14% interest rate will not be utilized to establish the Company's revenue requirement. In addition, the Commission shall require that copies of all executed versions of the Promissory Note and any and all renegotiated or resale contracts for the Note be provided to the Commission.

We also agree with the Staff, utility and the broker's recommendations that the Lock Box not be utilized except upon default of the Note. Although we agree in principle with the six recommended provisions of the Lock Box, there may be other provisions which are warranted to address circumstances that may arise during the term of the Promissory Note. Consequently, we direct that Paragraph No. 9 of the Promissory Note be modified to read as follows:

This Note is secured by a Lock Box Agreement, to be separately executed by the Maker and Payee. The Lock Box Agreement shall not become operational except under default as set forth in Paragraph No. 4 above. If a default occurs, the holder shall notify the Maker and the Idaho Public Utilities Commission in writing. The Commission's notice shall be sent to PO Box 83720, Boise, Idaho 83720-0074. This notice to the Maker and the Commission shall be provided at least fourteen (14) days in advance of the establishment of the Lock Box terms. At a minimum, the terms of the Lock Box shall contain the six (6) provisions contained in Order No. 29059 at p. 2.

In summary, we find it reasonable for Atlanta Power to execute a Promissory Note in the amount of \$34,000 as modified above. Use of the Promissory Note benefits both Atlanta Power and its counsel. Atlanta Power benefits by not having to pay the interest charge on past due amounts. Likewise, counsel benefits by the immediate payment of the \$34,000 and the subsequent holder of the Note benefits by receiving payments including interest under the Note. The Commission further finds that Atlanta Power has sufficient monthly cash flow to meet estimated Note payments of \$1,636.46 per month. Finally, the Commission finds it reasonable to defer implementation of the Lock Box mechanism until a default has been noticed. The Lock Box shall contain at a minimum the six terms and conditions proposed by Staff, the utility and the broker as set out above.

ORDER

IT IS HEREBY ORDERED that Atlanta Power Company's request to execute a Promissory Note in the amount \$34,000 is approved as conditioned in the body of this Order. This Order shall not be effective until the Company has paid the filing fee of \$50.

IT IS FURTHER ORDERED that the Promissory Note's interest rate of 14% will not be used to establish the Company's revenue requirement or customer rates.

IT IS FURTHER ORDERED that the Commission's review and approval of this matter shall not be construed to obligate the State of Idaho to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of Idaho Code, Title 61, Chapter 9 (*Idaho Code* §§ 61-901 *et seq.*).

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. ATL-E-02-1 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. ATL-E-02-1. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of June 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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