

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST OF)
ATLANTA POWER COMPANY TO ISSUE A) **CASE NO. ATL-E-04-1**
PROMISSORY NOTE IN THE AMOUNT OF)
\$57,000) **ORDER NO. 29636**
)

On November 2, 2004, Atlanta Power Company (“Company”) requested authority to execute a Promissory Note (“Note”) in the amount of \$57,000 payable to Mr. Eric Alberdi. The purpose of the note is to improve the Company’s cash flow in light of its recent ownership transition and system improvements. According to the Company’s Application, this Note will be established to pay the following items (in descending order of magnitude):

- a) \$18,000 to Israel Ray for wages (\$1,800 per month for ten months)
- b) \$15,937 to Israel Ray for long-term debt owed
- c) \$13,300 to Israel Ray for a 1981 line truck
- d) \$3,864.94 reimbursement to Israel Ray for parts he purchased related to installing a new engine in a 1975 line truck
- e) \$2,700 reimbursement to Israel Ray for grant writing expenses he paid
- f) \$1,500 to Israel Ray for rent on line truck (\$300 per month for five months)
- g) \$1,300 to Israel Ray for labor to replace engine in a 1975 line truck
- h) \$500 to Israel Ray for backhoe rent (one month)

After reviewing the draft Promissory Note and the Staff’s comments, we approve the Note as conditioned below.

THE PROMISSORY NOTE

As noted in the Company’s Application, the loan will be through a lock box arrangement similar to the loan approved by Commission Order No. 29059 in Case No. ATL-E-02-1. Under the terms of the draft Promissory Note, Atlanta Power shall pay approximate monthly installments of principal and interest until the Note’s maturity date of December 31, 2012 as follows: \$765.00 in Year One, \$737.00 in Year Two, \$723.00 in Year Three, and \$1,459.23 in Years Four through Seven. See Note ¶ 1. However, the maturity date should be January 1, 2012 as discussed with the Applicant. The interest rate on the \$57,000 Note will be

14%. *Id.* at ¶ 1.3. The Note also provides that Atlanta Power has the right to make prepayments at any time without penalty during the final four years of the Note. *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. *Id.* 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 preset provisions of the Lock Box Agreement. According to the draft Lock Box Agreement, 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 the monthly installment on the Promissory Note by the due date established. The amount will vary as described in Note ¶ 1.1; and
- (4) The remaining balance of the Lock Box funds are to be available to Atlanta Power for payment of other operating expenses.

The draft Note provides that if a default occurs, the holder of the Note (Eric Alberdi) shall notify the Maker (Israel Ray) and the IPUC in writing. This notice shall be provided at least fourteen (14) days in advance of the establishment of the Lock Box terms. The draft Note also provides that the terms of the Lock Box and Security Agreement shall contain at a minimum the provisions contained in the IPUC Order approving the loan. *Id.*

STAFF COMMENTS

After reviewing the Promissory Note and the suggested terms for the Lock Box, Staff asserted that the estimated monthly payments are reasonable if Atlanta Power appropriately focuses on monthly cash management. Based upon Atlanta Power's revenues reported in its 2003 Annual Report, the average monthly revenue is over \$5,000. Consequently, Staff believes that there is sufficient monthly cash flow to meet the estimated monthly payment contemplated in the Promissory Note. As a result, Staff recommends that the Note be approved.

Staff emphasizes that approval of this loan should not and does not constitute a finding of prudence and/or allowability for inclusion in rates of planned expenditures to be funded by loan proceeds. Instead, the determination of whether each item should be included in rates and if so, in what dollar amount, will be made whenever the Company files its next general rate case. Because some of the items listed are operating expenses, recovery in rates will be based on the level of these expenses incurred during the test year. Additionally, as with all rate cases, the reasonableness of the amounts expended will be analyzed for appropriateness and may result in disallowance of a portion or all of an amount for which recovery is sought.

Staff believes the interest rate of 14% is high due to the structure and purpose of the loan along with the lack of collateral. Staff notes that the 14% interest rate of the Note will not be utilized to establish customer rates as agreed with the prior loan. Atlanta Power's return on equity rate allowed in future rate cases should be the maximum rate allowed as a debt cost for ratemaking purposes.

Finally, Staff 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 within seven (7) days of execution.

DISCUSSION AND FINDINGS OF FACT

The Commission finds that Atlanta Power is an electric corporation within the definition of *Idaho Code* § 61-119 and a public utility within the definition of *Idaho Code* § 61-129. Therefore, the Commission has jurisdiction over this Application pursuant to the provisions of *Idaho Code* §§ 61-901 *et seq.* The Commission further finds that the Application reasonably conforms to Rules 141 through 150 of the Commission's Rules of Procedure (IDAPA 31.01.01.141-150).

After examining the Application and Staff's evaluation of it, the Commission finds that an evidentiary hearing in this matter is not required. The Commission further finds that the proposed transaction is consistent with the public interest and Atlanta Power's proper performance of its duties as a public utility.

The Commission finds that the general purposes to which the loan funds will be utilized are lawful purposes under the public utilities laws and are compatible with the public interest. However, this is only a general approval and is not a finding of fact or a conclusion of law that the particular use to which these funds are to be put is approved by this Order. The issuance of an Order authorizing the proposed Promissory Note does not constitute agency determination/approval of the type of financing or the related costs for ratemaking purposes. The Commission does not have before it for determination in this case and, therefore, does not determine the effect of issuance on rates to be charged by Atlanta Power to consumers in the State of Idaho.

Having reviewed the draft Promissory Note and the comments of the Commission Staff, the Commission finds that Atlanta Power presently has sufficient monthly cash flow to meet the variable Note payments due over the course of the seven-year loan. We also find that the Company has paid the filing fee required by *Idaho Code* § 61-905. Thus, we approve Atlanta Power's issuance of a Promissory Note in the amount of \$57,000 with a January 1, 2012 maturity date conditioned upon Atlanta Power providing the Commission with copies of all executed versions of the Promissory Note and any and all renegotiated or resale contracts for the Note within seven (7) days of execution.

ORDER

IT IS HEREBY ORDERED that Atlanta Power Company's request to execute a Promissory Note in the amount \$57,000 is approved as conditioned in the body of this Order.


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 planned expenditures funded by the proceeds of the Promissory Note shall not be used to establish customer rates until a finding of prudence and a dollar amount for recovery is established for each item in Atlanta Power Company's next rate case.

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-04-1 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-04-1. 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 19th day of November 2004.



PAUL KJELLANDER, PRESIDENT

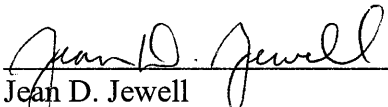


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:ATLE0401_in