

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL
WORKING FILE

FROM: PATRICIA HARMS
TERRI CARLOCK

DATE: NOVEMBER 16, 2004

RE: ATLANTA POWER COMPANY'S REQUEST TO ENTER INTO A
PROMISSORY NOTE FOR \$57,000; CASE NO. ATL-E-04-1.

Atlanta Power Company requests authority to enter into a Promissory Note for \$57,000 with an interest rate of 14%. The Note states that the principal and interest monthly payments will be as follows during its seven-year term:

Year One:	\$765.00
Year Two:	\$737.00
Year Three:	\$723.00
Years Four through Seven:	\$1,459.23

A draft of the Note is attached. All payments made under the Note will first apply to fees, charges, (including late charges, attorneys fees and costs), then to interest and then to principal. Atlanta Power has the right to make prepayments only during the final four years of the Note.

The purpose of the Note is to improve the Company's cash flow. This is especially important given the Company's recent transition in ownership and resulting 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)

Israel Ray provided receipts associated with the above items to Staff. All receipts except for items (d) and (e) were from Mr. Ray's other business, Ray Brothers Seed Farms.

LOCK BOX

As noted in the Application, this loan will include a Lock Box arrangement if needed similar to the last Company loan approved by the Commission in Case No. ATL-E-02-1. The utility and the payee (Eric Alberdi, the same individual that purchased the Atlanta Power Note approved by the Commission in Case No. ATL-E-02-1) will execute a separate "Lock Box Agreement". The Lock Box will become effective **only** upon a default in making the monthly payment of principal or interest when due (Promissory Note, Paragraph No. 9). This Lock Box Agreement will prescribe the order or priority of expense payments made from the utility's accounts receivable and will make those payments if invoked. The Lock Box Agreement will provide that customer payments due Atlanta Power be paid into the Lock Box. Based upon the draft Lock Box Agreement, Staff understands that the Lock Box will 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 \$2,000 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 on page 1.
- (4) The remaining balance of the Lock Box funds is 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 (Promissory Note, Paragraph No. 9).

RATEMAKING

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 items (a) – (h) listed on pages 1 and 2. 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.

STAFF RECOMMENDATIONS

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 also recommends 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.


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

Staff further recommends that items (a) – (h) listed on pages 1 and 2 not be utilized to establish customer rates until a finding of prudence and a dollar amount for recovery is established for each item in the Company's next general rate case.

COMMISSION DECISION

Does the Commission approve authority to enter into the \$57,000 Promissory Note?

Does the Commission accept the proposed conditions?



Patricia Harms

PROMISSORY NOTE

Maker: Atlanta Power Company, Inc., an Idaho corporation
Date of Making: January 1, 2005
Place of Making: Caldwell, Idaho
Principal Amount: \$57,000.00
Monthly Payment Amount:
 (Year One): \$765.00
 (Year Two): \$737.00
 (Year Three): \$723.00
 (Year Four - Seven): \$1,459.23
Interest Rate: Fourteen Percent (14%) per annum
Maturity Date: December 31, 2012

1. Terms. The undersigned (the "Maker"), for value received, jointly and severally promise to PAY TO THE ORDER OF ERIC ALBERDI, an individual, (the "Payee or Holder"), at P.O. Box 2778, Hailey, Idaho 83333, or such other place or places as may be designated by Holder, the principal sum of FIFTY-SEVEN THOUSAND AND NO/100 DOLLARS (\$57,000.00), in lawful currency of the United States of America together with interest thereon as provided hereunder, which such principal and interest shall be payable as follows:

1.1. Maker shall pay installments of principal and interest in the amount of:

Monthly Payment Amount:
 (Year One): \$765.00
 (Year Two): \$737.00
 (Year Three): \$723.00
 (Year Four - Seven): \$1,459.23

each month beginning on the first day of January 2005 and continuing on the same day each month thereafter until the Maturity Date as provided below when the entire balance of principal and accrued interest, if any, shall be due and payable in full. Each installment payment must be received by the Holder no later than the fifth day of each month or the Note shall be in default without notice or further demand;

1.2. The remaining principal balance and all accrued but unpaid interest, if any, shall be due and payable in full without demand on December 31, 2012 (the "Maturity Date"); and

1.3. The unpaid principal amount hereof from time to time outstanding shall bearing interest from and after the Date of Making at the rate of fourteen percent (14%) per annum. At Maturity, or if any payment hereunder is not paid within fifteen (15) calendar days of the required payment date, then all sums evidenced hereby shall bear interest at the lesser rate of (i) twenty percent (20%) per annum or (ii) the highest rate allowed by law, until paid or until the default is otherwise cured. All payments hereunder shall be applied first to fees, charges, including late charges attorney's fees and costs, if any, then to interest and then to principal.

2. Prepayment. Maker shall not have the right of prepayment during the first three provided it pays Holder all interest due at the Note rate for the first three (3) years of the Note. Thereafter, Maker shall have the right of prepayment, without penalty or interest, during the final four (4) years of the Note.

3. Immediately Available Funds. All payments made under this Note, whether on account of the principal sum or interest, if any, shall be made in immediately available funds without setoff or counterclaim and free and clear of and without deduction for or on account of all present and future fees, deductions, withholdings, restrictions or conditions of whatsoever nature, if any, now or hereafter imposed, levied, calculated, withheld or assessed. "Immediately available funds" shall mean funds tendered without conditions or restrictions on release and in a medium which is subject to immediate deposit and/or credit without confirmation, clearance period, waiting or other delay for or restriction on immediate use, or negotiation. Acceptance of any payment made otherwise than in immediately available funds shall not constitute a waiver of the right to require payment in immediately available funds.

4. Default. If default is made in the payment of principal or interest when due, then the whole sum of principal and accrued interest, shall at the option of the holder hereof, become immediately due and payable, anything contained herein or in any instrument now or hereafter relating to or securing the indebtedness evidenced hereby to the contrary thereof notwithstanding, time being of the essence of this Note. Such option shall continue until all such defaults have been cured. Failure to exercise such option, or any other right the holder may have in such event, or be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default. In the event of default under this Note, Maker agrees to pay all costs incurred in collecting the sums due hereunder, including, without limitation, attorney's fees, escrow charges, the costs of any notice of default, whether suit be brought or not, and on appeal and/or in bankruptcy court.

5. Modifications. The undersigned and any party pledging collateral as security for the payment hereof agree that the Holder hereof may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the indebtedness

evidenced hereby or release and/or subordinate any security for this Note at any time at the request of anyone now or hereafter liable, and such consent shall not alter nor diminish the liability of any person or the enforceability of this Note or any security interest pledged as collateral for the payment hereof. Each and every party now or hereafter signing or endorsing this Note binds himself as a principal and not as a surety. All of the terms, covenants, provisions and conditions herein contained are made on behalf of, and shall apply to and bind the undersigned and their respective personal representatives, successors and assigns, jointly and severally.

6. Transfer and Endorsement. This Note may be transferred or negotiated only with the endorsement by the Holder hereof, which transfer or negotiation shall be without warranty by, or recourse against, the said endorser.

7. Attorneys' Fees. The undersigned agree that if any installment of principal and/or interest or any other amount due under this Note or any agreement securing this Note is not paid on the applicable payment or maturity date (including grace periods), then the undersigned shall pay to Holder all costs, including, without limitation, attorneys' fees, expenses, penalties and other damages incurred by Holder as a result of such late payment or failure to pay as provided therein.

8. Applicable Law. This Note shall be governed by Idaho law as an agreement between residents and domiciliaries of said State entered into in said State and to be performed in said State.

9. Security. This Note is secured by a Lock Box and Security Agreement, to be separately executed by the Maker and Payee. The segregated account and related disbursement provisions of the Lock Box and Security 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 Idaho Public Utilities Commission's notice shall be sent to PO Box 83720, Boise Idaho, 83720-0074. This notice to the Maker and the Idaho Public Utilities Commission shall be provided at least fourteen (14) days in advance of the establishment of the segregated account referenced in the Lock Box and Security Agreement terms. At a minimum, the terms of the Lock Box and Security Agreement shall contain the [ENTER?] provisions contained in Idaho Public Utilities Commissions Order No. [ENTER AT PAGE ?].

10. Waiver. The Maker, sureties, guarantors and endorsers hereof severally waive presentment for payment, protest, notice or protest and of non-payment of this Note, and agree that on default in payment of this Note, or any part, whether principal or interest, when due, the whole amount remaining unpaid shall, without notice of non-payment or demand of payment, immediately become due and payable.

EXECUTED effective as of the Date of Making set forth above.

"MAKER"

ATLANTA POWER COMPANY, INC., an Idaho corporation

By: Maverick Ray, a.k.a. Israel Ray, President

ENDORSEMENT

Endorsement of the Note, in the stated principal amount of \$57,000.00, executed by ATLANTA POWER COMPANY, INC., an Idaho corporation, payable to the order of Eric Alberdi, an individual.

Pay to the order of Eric Alberdi without recourse or warranty.

ERIC ALBERDI

By: Eric Alberdi