

## DECISION MEMORANDUM

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

**FROM:** PATRICIA HARMS  
TERRI CARLOCK

**DATE:** NOVEMBER 24, 2004

**RE:** ATLANTA POWER COMPANY'S REQUEST FOR AN AMENDMENT  
TO ITS PROMISSORY NOTE THAT WAS APPROVED BY ORDER NO.  
29636; CASE NO. ATL-E-04-1.

On November 2, 2004, Atlanta Power Company ("Company") requested authority to enter into a Promissory Note for \$57,000 with an interest rate of 14% payable to Mr. Eric Alberdi. The **Original** Draft Note ("Original Note") the Company provided and that the Commission approved stated that the principal and interest monthly payments (Original Note ¶ 1.1) would 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

The Company has submitted a **Revised** Note ("Revised Note") which is attached and has asked that the payment terms approved in Order No. 29636 be amended as follows:

Year One:	\$765.00
Year Two:	\$751.00
Year Three:	\$737.00
Years Four through Seven:	\$1,459.23

The maturity date of the Original Note has been changed to November 30, 2011 (Revised Note ¶ 1.2). The initial payment date has also been revised from the first day of January 2005 (Original Note ¶ 1.1) to the first day of December 2004 (Revised Note ¶ 1.1). The Company's Revised Note also changes the "Date of Making" the note from January 1, 2005 (Original Note,

page 1) to 2004 (Revised Note, page 1). Staff has emphasized to the Maker (Israel Ray) that the Revised Note cannot be executed until the Commission approves the revised terms.

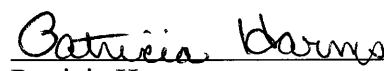
Finally, the Company's Revised Note (Revised Note ¶ 2) states that Maker (Israel Ray) has the right of prepayment during the first three (3) years of the Revised Note provided that he pays the Holder (Eric Alberdi) \$23,436.00 (less interest actually paid prior to date of prepayment), said amount being the equivalent of all interest that would be due at the end of three (3) years of the Note. Thereafter, Atlanta Power has the right of prepayment without penalty or interest, during the final four (4) years of the Revised Note.

#### **STAFF RECOMMENDATION**

The revised estimated monthly payments are still reasonable if Atlanta Power appropriately focuses on monthly cash management. As a result, Staff recommends that the Revised Note provisions be approved subject to the same conditions described in Commission Order No. 29636.

#### **COMMISSION DECISION**

Does the Commission approve the revised provisions of the \$57,000 Promissory Note?

  
\_\_\_\_\_  
Patricia Harms

**PROMISSORY NOTE**

Maker: Atlanta Power Company, Inc., an Idaho corporation

Date of Making: \_\_\_\_\_, 2004

Place of Making: Caldwell, Idaho

Principal Amount: \$57,000.00

Monthly Payment Amount:

(Year One):	\$765.00
(Year Two):	\$751.00
(Year Three):	\$737.00
(Year Four - Seven):	\$1,459.23

Interest Rate: Fourteen Percent (14%) per annum

Maturity Date: November 30, 2011

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):	\$751.00
(Year Three):	\$737.00
(Year Four - Seven):	\$1,459.23

each month beginning on the first day of December 2004 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 November 30, 2011 (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 have the right of prepayment during the first three (3) years provided that Maker pays Holder \$23,436.00 (less interest actually paid prior to date of prepayment), said amount being the equivalent of all interest that would be due at the end of 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 four (4) provisions contained in Idaho Public Utilities Commissions Order No. 29636, p. 2.

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

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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

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By: Eric Alberdi