

## DECISION MEMORANDUM

**TO:** COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSIONER KEMPTON  
COMMISSION SECRETARY  
LEGAL  
WORKING FILE

**FROM:** PATRICIA HARMS  
TERRI CARLOCK

**DATE:** FEBRUARY 22, 2008

**RE:** ATLANTA POWER COMPANY'S REQUEST TO ENTER INTO TWO  
PROMISSORY NOTES TOTALING \$110,000; CASE NO. ATL-E-08-1.

Atlanta Power Company filed an Application on January 22, 2008 requesting authority to enter into two Promissory Notes for a total of \$110,000 to pay extraordinary costs incurred in 2007 associated with the failure of the Company's hydroelectric turbine. Atlanta Power Company is a public utility electric corporation within the meaning of the Idaho Public Utility Law and is engaged in conducting a general electric utility service business in and around the community of Atlanta in Elmore County, Idaho, having its principal office and place of business in Caldwell, Idaho. According to its Application, the Company currently provides electric service to approximately 84 residential and commercial customers.

The Commission exercises authority over the issuance or assumption of debt for public utilities pursuant to *Idaho Code* § 61-901. The Company has submitted the appropriate fees for this requested borrowing under *Idaho Code* § 61-905.

In early June of 2007 the Company's hydroelectric turbine at the Kirby Dam on the Middle Fork of the Boise River failed. As the Commission is aware, Atlanta's power system has a single source of generation. Because it is not interconnected with any other electric supply system, the entire system is without power if the turbine fails. The Company, in order to provide continued service to customers, arranged for the temporary rental of a diesel generator and then purchased and installed a permanent back-up diesel generator. The diesel generators provided electric service to customers while the hydro turbine was removed and repaired. The turbine has been repaired and returned to service. In its Application, the Company has stated it incurred extraordinary costs of

\$119,922.49 for the repairs to the turbine and the acquisition and operation of the diesel generators while the turbine was out of service. Attached to its Application as Exhibit No. 1, is a detailed schedule of the costs incurred. The two largest costs listed on Company Exhibit No. 1 are vendor payments to repair the turbine (\$43,000 and \$10,000) for a total of \$53,000. This Exhibit also lists generator rental, generator purchase, fuel, crane, labor, parts, financial consultant and other costs as related to the turbine failure. In its Application the Company states that these costs were paid through temporary loans from the owners and deferred salaries and wages.

No finalized drafts of the Notes were available as of the close of business on February 21, 2008. In its Application the Company characterizes the Notes as follows:

- 1) A \$100,000 loan for a term of seven (7) years at a rate of 14% per annum with monthly payments in the amount of \$1,874 and,
- 2) A \$10,000 loan for a term of one (1) year at a rate of 10.75% with loan repayment accomplished through monthly electric service credits of \$882.65 for the customer.

In its Application the Company states that the \$9,922.49 extraordinary costs in excess of these loan amounts will be treated as a temporary loan to the Company from the owners at an interest rate of 12% annually. Interest will accrue on the temporary loan until such time as the cash flow of the Company will allow the Company to repay the loan to the owners.

On February 5, 2008 the Company requested an extension to March 1, 2008 to complete the loan approval process as Staff had requested details of the terms and conditions of the longer-term loan. Specifically, Staff had asked about any Lock Box arrangements associated with the \$100,000 loan.

#### **LOCK BOX AND RELATED NOTE**

Staff was notified that a Lock Box Agreement was planned for the \$100,000 Note although the Company's Application did not list this or any other loan attributes beyond those previously described. Promissory Notes are sometimes secured by means of a separate Lock Box Agreement. A Lock Box Agreement is an agreement that generally prescribes the order or priority of payments made from the utility's accounts receivables and makes those payments if the loan goes into default. In these types of arrangements, customer payments are deposited into a Lock Box and all disbursements from the Lock Box are made pursuant to the pre-set provisions of the Lock Box Agreement. For example, the \$57,000 Note approved by the Commission in Order No. 29636, Case

No. ATL-E-04-1 includes a Lock Box arrangement effective only upon a default in making the monthly payment of principal or interest when due.

Lock Box Agreements act as security for the individual(s) loaning the funds because the pre-set disbursement provisions of the agreement include the monthly loan payments. Staff recommends that the Lock Box agreement also contain pre-set disbursement provisions that ensure the continued delivery of reliable electrical service to its customers. Based upon discussions with the Company's owner, it is Staff's understanding that the Lock Box and Security Agreement will contain the following provisions that prescribe the order or priority of expense payments made from the utility's accounts receivable to ensure continued delivery of electrical service to its customers in the event of a default on the loan.

- 1) First, a \$2,100 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, Idaho Public Utilities Commission (IPUC) fees, and the minimum income tax payable by Atlanta Power. This reserve was calculated based upon amounts reported by Atlanta Power in its 2006 Annual Report to the IPUC and Staff's discussion with the relevant property tax authority.
- 2) Second, an additional \$1,100 reserve will be maintained in each and every month to pay the monthly contract labor associated with meter reading, billing, maintenance and duties necessary to operate the utility. Management fees are excluded from this reserve.
- 3) Third, an additional \$375 will be reserved each month until a balance of \$4,500 is accumulated to pay maintenance costs necessary to maintain electrical service to customers and office supply expenses necessary to bill and process customer receipts.
- 4) Fourth, an additional \$375 will be reserved each month until a balance of \$4,500 is accumulated to pay costs to operate the back-up generator of the utility, if needed.
- 5) Fifth, pay the monthly installment on the Promissory Note by the due date established.
- 6) The remaining balance of the Lock Box funds is available to Atlanta Power for payment of other operating expenses.

Staff recommends that the \$100,000 Note and Lock Box Agreement include the following provisions.

- The Lock Box will become effective **only** upon a default in making the monthly payment of principal or interest when due.

- 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 Note and the Lock Box and Security Agreement contain at a minimum the provisions contained in the IPUC Order approving the loan.

## **RATEMAKING**

Staff emphasizes that approval of these loans should not and does not constitute a finding of prudence and/or allowability for inclusion in rates of items listed on Company Exhibit No. 1. Instead, the determination of whether each item should be included in rates and if so, in what dollar amount, will be made when the Company files its next general rate case. 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. This evaluation includes whether there is sufficient and competent evidence to verify the nature of the cost and its appropriateness for the delivery of electric service to customers. For example, a detailed invoice from the originating vendor is required and not just a credit card receipt authorizing the charge or returned check evidencing that a financial transaction has occurred.

Staff believes the interest rate of 14% on the \$100,000 Note is high due to the structure and purpose of the loan along with the lack of collateral. Staff notes that the 14% interest rate on the \$100,000 Note will not be utilized by Staff to establish customer rates as discussed with the prior loan (Case No. ATL-E-04-1). A debt rate based on loan options will be evaluated to determine the maximum loan rate to be reflected in rates. 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.

Atlanta Power Company, based upon its 2006 Annual Report, does not have sufficient cash flow to meet the payments in these two Notes; the \$57,000 Note approved in Case No. ATL-E-04-1; and its reported Operating Expenses (exclusive of depreciation). In its Application, the Company identified that it is currently working on a recovery proposal for these costs and will file another application in the near future for that purpose. Because the results of such a future proceeding are unknown and may include disallowed costs, Staff recommends that any cash flow issues associated with loan payments for items disallowed for ratemaking purposes permanently reduce the temporary loans provided by the owners. More specifically, if costs that are the subject of these

loans are disallowed in a ratemaking proceeding, the repayment of that portion of these loans is solely the responsibility of the Company's owners.

## **STAFF RECOMMENDATIONS**

Staff recommends that these Notes be approved only if cash flow issues caused by ratemaking issues (disallowance of costs) permanently reduce the temporary loans provided by the owners. More specifically, Staff recommends that if costs that are the subject of these loans are disallowed in a ratemaking proceeding, the repayment of that portion of these loans is solely the responsibility of the Company's owners.

Staff recommends that the \$100,000 Note only be approved with the Lock Box and other provisions as discussed in the Lock Box section of this memo.

Staff recommends that the 14% interest rate on the \$100,000 Promissory Note not be utilized to establish customer rates in the Company's next general rate case. Staff will recommend a more reasonable rate based on market borrowing costs. Atlanta Power's return on equity allowed in future rate cases should be the maximum rate allowed as a debt cost for ratemaking purposes.

Staff recommends that copies of all executed versions of the Promissory Notes and any and all renegotiated or resale contracts for the Notes be provided to the Commission within seven (7) days of execution.

Finally, Staff recommends that items listed on Company Exhibit No. 1 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**

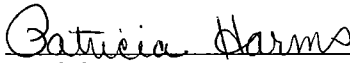
Does the Commission approve authority for Atlanta Power to enter into the \$100,000 Promissory Note with no collateral beyond the Lock Box and Security Agreement and other provisions as discussed in the Lock Box section of this memo?

Does the Commission approve authority for Atlanta Power to enter into the \$10,000 Promissory Note?

Does the Commission accept Staff's proposed conditions associated with each Note? Those conditions include the following:

- Copies of all executed versions of the Promissory Notes and any and all renegotiated or resale contracts for the Notes are provided to the Commission within seven (7) days of execution.
- The costs that are the subject of these loans (the items listed on Company Exhibit No. 1) 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.
- The cash flow issues caused by ratemaking issues (disallowance of costs) permanently reduce the temporary loans provided by the owners. More specifically, that if costs that are the subject of these loans are disallowed in a ratemaking proceeding, the repayment of that portion of these loans is solely the responsibility of the Company's owners.
- The 14% interest rate on the \$100,000 Promissory Note not be utilized to establish customer rates in the Company's next general rate case. Atlanta Power's return on equity allowed in future rate cases should be the maximum rate allowed as a debt cost for ratemaking purposes.

Does the Commission choose to do anything else?

  
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Patricia Harms

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