

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER RAPER  
COMMISSIONER ANDERSON  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL

**FROM:** BRANDON KARPEN  
DEPUTY ATTORNEY GENERAL

**DATE:** NOVEMBER 16, 2018

**SUBJECT:** IN THE MATTER OF THE INVESTIGATION OF ATLANTA POWER  
COMPANY SERVICE AND CUSTOMER RELATIONS;  
CASE NO. ATL-E-18-01

On February 20, 2018, the Commission opened an investigation into Atlanta Power Company. Staff has made efforts to conduct an investigation, but has been hampered by the Company's refusal to respond to Staff inquiries, and comply with Commission order.

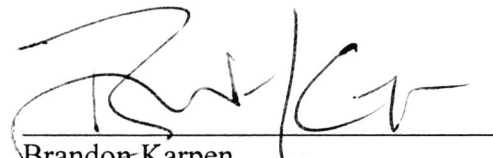
Furthermore, over the last two years, the Company has failed to comply with Idaho Code §§ 61-1001-03 by failing to file annual returns of gross operating revenues for 2017 and 2018. The Company has also failed to pay its annual fees for 2017 and 2018.

### STAFF RECOMMENDATION

Staff recommends that the Commission issue the attached proposed Order to show cause why the Company should not be required to comply with Commission Order, respond to Staff discovery requests, immediately file returns, pay all outstanding fees, and pay penalties. The proposed Order further directs the attorney of the Commission to commence an action in District Court should the Company fail to show such cause.

### COMMISSION DECISION

Does the Commission wish to issue the attached proposed Order?

  
\_\_\_\_\_  
Brandon Karpen  
Deputy Attorney General

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION )**  
**OF ATLANTA POWER COMPANY )** **CASE NO. ATL-E-18-01**  
**SERVICE AND CUSTOMER RELATIONS )**  
**)** **ORDER NO. \_\_\_\_\_**  
**)** **(NOTICE OF HEARING &**  
**)** **ORDER TO SHOW CAUSE)**

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In the spring of 2017, Commission Staff received informal complaints from residents of Atlanta, Idaho, relating to electric service being provided by Atlanta Power Company. The customers stated that the Company's hydroelectric turbine was no longer working and the Company was using its diesel generator to provide electric service. It was reported that the generator was regularly running out of fuel and electric service outages were occurring frequently for significant periods of time. Staff received several complaints throughout 2017 about inadequate service and outages. Further, customers reported that they were unable to contact anyone from the Company.

On January 2, 2018, Atlanta Power customer Mary Drake filed a Formal Complaint against Atlanta Power Company claiming the Company is violating Commission Order No. 31086 and Idaho Code § 61-302 by failing to maintain adequate service. On January 22, 2018, Staff requested that the Commission direct the Company to respond to the Formal Complaint of Mary Drake, and direct Staff to open an investigation into the Company. Staff recommended that the investigation focus on service reliability, maintenance and operation of the Company's facilities, and customer service. As part of its investigation, Staff would review the Company's compliance with past orders, inspect generation and distribution facilities, confer with customers, and propound discovery on the Company.

Atlanta Power is an "electrical corporation" as defined by Idaho Code § 61-119. As such, the Company is "public utility" subject to the jurisdiction of the Commission. Idaho Code § 61-129. This matter comes before the Commission due to the Company's failure or refusal to file a written response to the formal complaint of Mary Drake, or respond to Staff inquiries, such as production requests and written interrogatories. *See* Order No. 33988 (ordering the Company to "respond to the Formal Complaint of Mary Drake," and "respond to any inquiries" from

Commission Staff.”). Staff has been entirely unable to communicate with Israel Ray, the Company’s owner and operator, during the pendency of this case.

## **BACKGROUND**

### ***1. Formal Complaint***

On January 2, 2018, Atlanta Power customer Mary Drake filed a Formal Complaint against Atlanta Power Company claiming the Company is violating Commission Order No. 31086 and Idaho Code § 61-302 by failing to maintain adequate service. Drake stated that Atlanta Power customers experience frequent outages, and that no one from the Company is available to perform system repairs, accept, or respond to customer concerns.

### ***2. Informal Complaints***

In the spring of 2017, Commission Staff received a number of complaints from a residents of Atlanta, Idaho, outlining concerns related to electric service being provided by Atlanta Power Company. The customers stated that the Company’s the hydroelectric turbine was no longer working and the Company was using a diesel generator to provide electric service. It was reported that the generator was regularly running out of fuel and electric service outages were occurring frequently for significant periods of time. Staff received several complaints about throughout 2017 about inadequate service and outages, and the inability of customers to contact anyone from the Company.

### ***3. Staff Investigation***

On January 22, 2018, Staff requested that the Commission direct the Company to respond to the Formal Complaint, and also open a formal Staff investigation into the Company to respond to issues raised in informal complaints. Staff recommended that the investigation focus on service reliability, maintenance and operation of the Company’s facilities, and customer service. As part of its investigation, Staff would review the Company’s compliance with past orders, inspect generation and distribution facilities, and confer with customers. The Commission approved Staff’s recommendation, and issued a summons regarding the Formal Complaint of Mary Drake, and also ordered that the informal customer complaints be addressed as part of the Staff investigation under the same docket. The Commission directed Staff to work with the Company and its customers to investigate these issues, identify possible solutions and provide a report detailing Staff’s findings within six months.

As detailed further in the Affidavit of Staff witness Johnathan Farley, the Commission issued the Company a summons on February 21, 2018, and March 8, 2018, directing the Company to respond in writing to formal complaint, and comply with the Staff investigation. *See* Order No. 34017. On March 16, 2018, Staff propounded 14 production requests. The Company has failed or refused to comply with Commission order, and has failed or refused to respond to Staff production requests. On August 7, 2018, Staff mailed the Company notice that failing to respond may result in further Commission action, including the imposition of fines.

#### **4. *Communications From the Company***

Staff has been unable to make contact with the Company's owner and sole representative, Israel Ray. Mr. Ray's brother, Gene Ray, has represented to Staff by telephone that he is caring for Israel, who is experiencing some medical issues, and is managing his affairs, including issues related to Atlanta Power. Gene has expressed that he does not want to be considered an employee or agent of Atlanta Power, and has refused to provide any written response to Staff or the Commission. To date, no written response or communication has been produced by Atlanta Power. Staff is unable to complete its investigation into the Company because the Company refuses to comply with the Commission order, respond to Staff inquiries, and

Throughout the pendency of the investigation, the Commission and its Staff have met their statutory duties with regard to seeking information from the Company. *See Farley Affidavit* (Exhibit No. 1). On multiple occasions, Staff has attempted to obtain written responses to the formal customer complaint, the Commission directed investigation, and documents that are responsive to the Staff's informational requests. *Id.* Staff provided these requests via certified mail. *Id.* Nevertheless, the Company has failed or refused to comply with Commission order, meet Staff demands that it provide written responses to the formal complaint, or respond to Staff informational requests. *Id.*

The failure to: 1) comply with Commission Order; 2) provide a written response to the formal complaint; and 3) respond to Staff informational requests are unique violations of Idaho Code § 61-1003.

#### **5. *Commission Regulatory Fees***

The Commission's operating funds are derived by assessing regulatory fees upon utilities and railroads subject to the Commission's jurisdiction. Each year, the Legislature authorizes the Commission to expend funds necessary to regulate and supervise utilities and railroads doing

business in Idaho. *Idaho Code* §§ 61-1001, *et seq.* The maximum assessment fee for each utility shall not exceed one percent of its gross revenues, and the minimum fee shall be no less than \$50. *Id.*

Idaho Code § 61-1003 requires that, “[o]n or before April 1st of each year, each public utility and railroad corporation subject to the jurisdiction of the commission, shall file with the commission a return verified by an officer or agent of the public utility or railroad corporation involved, showing its gross operating revenues from its intrastate utility or railroad business in Idaho for the preceding calendar year during which it carried on such intrastate utility or railroad business.”

Idaho Code § 61-1001 requires that “[e]ach public utility ... subject to the jurisdiction of the commission, and subject to the provisions of this act, shall pay to the commission in each year, a special regulatory fee in such amount as the commission shall find and determine to be necessary, together with the amount of all other fees paid or payable to the commission by each such public utility and railroad corporation ....”

Once the assessment is determined, the Commission notifies the utility of its regulatory fee no later than May 1 of each year. The regulatory fee may be paid to the Commission in equal semi-annual installments due May 15 and November 15. *Id.* Any utility may object to its regulatory fee “on or before the time specified for payment of the first installment of the assessment made against it. *Id.* Idaho Code § 61-1004 contains the duties of the Commission with regard to the determination of fees.

Commission staff alleges that Atlanta Power Company has failed to file its revenue statements for calendar years 2017 and 2018. Staff further alleges that Atlanta Power Company failed to pay its assessed fees for calendar years 2017 and 2018.

For the period in question, the Commission has met its statutory duties in determining and assessing fees. *See Ashcraft Affidavit* (Exhibit No. 2). On multiple occasions, Staff has attempted to obtain the Company’s verified returns and collect annual fees, sending invoices, demand letters, and notification that failure to comply would result in legal action. *Id.* Nevertheless, the Company has failed or refused to meet Staff demands that it file annual returns and pay outstanding fees. *Id.*

In summary, the Company has failed to file its statutorily required annual verified return in 2017 and 2018. Each failure to file violates Idaho Code § 61-1003. Also, the Company has

failed to pay its statutorily required annual regulatory fees to the Commission in 2017 and 2018. *Id.* Each failure to pay violates Idaho Code § 61-1003.

### **JURISDICTIONAL STATEMENT**

Jurisdiction in this matter is founded in the Public Utilities Law, Idaho Code §§ 61-101 *et seq.*, including Idaho Code § 61-501, which vests the Commission with the authority and jurisdiction to supervise and regulate every public utility in the state. Jurisdiction is further founded in Idaho Code §§ 61-701, *et seq.*, which provides direction to the Commission relating to enforcement, penalties, and interpretation of public utilities law.

### **CLAIMS**

#### **1. *Count One: Violations of Idaho Code § 61-401***

Idaho Code § 61-401 states “[e]very public utility shall furnish to the commission, in such form and such detail as the commission shall prescribe, all tabulations, computations and all other information required by it to carry into effect any of the provisions of this act and shall make answers to the best of their knowledge, to all questions submitted by the commission.”

Atlanta Power Company has failed or refused, on multiple occasions to comply with Commission order and summons to “respond to the formal Complaint,” and “respond to any inquiries” from Commission Staff. Order No. 33988. The summons was issued on February 21, 2018. The Company can remedy this claim by responding to the formal Complaint and all related inquiries in writing, and satisfying any outstanding penalties.

#### **2. *Count Two: Violations of Idaho Code § 61-610***

Idaho Code § 61-610(1) provides that “[t]he commission, each commissioner and [Commission Staff] shall have the right at any and all reasonable times to inspect the accounts, books, papers and documents of any public utility....”

Atlanta Power Company has failed or refused, on multiple occasions to provide to Commission Staff with any information related to the Company, including account information, ownership status, any and all books and papers of the Company. Discovery was first propounded on the Company by Staff on March 16, 2018. The Company can remedy this claim by responding to Staff’s discovery requests in writing, and satisfying any outstanding penalties.

#### **3. *Count Three: Violations of Idaho Code § 61-1003***

Idaho Code § 61-1003 requires Atlanta Power Company to file annual verified returns showing gross operating revenues from its railroad business in Idaho for the preceding calendar

year.

The Company has failed or refused to file the annual verified return in 2017 and 2018 in violation of Idaho Code § 61-100, with each failure to file creating a distinct and unique cause of action. The Company can remedy this claim by filing verified returns showing its gross operating revenues for 2017 and 2018, and satisfying any outstanding penalties.

**4. Count Four: Violations of Idaho Code § 61-1001**

Idaho Code § 61-1001 requires that Atlanta Power Company pay the Commission an annual regulatory fee in an amount based on their annual verified return.

In 2017, the Company failed or refused to pay the annual regulatory fee of \$50<sup>1</sup> to the Commission in violation of Idaho Code § 61-1003. In 2018, the Company again failed or refused to pay its annual regulatory fee of \$50.00 in violation of Idaho Code § 61-1003. The Company can remedy this claim by paying its outstanding regulatory fees, plus interest, for 2017 and 2018, and satisfying any outstanding penalties.

**5. Enforcement and Penalties: Idaho Code § 701, et seq.**

Chapter 7 of the Idaho Public Utilities Law relates to the enforcement of the utility code, and penalties for violations of the code. Idaho Code § 61-706 states:

Any public utility which violates or fails to comply with any provisions of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, under the provisions of this act, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject to a penalty of not more than \$2,000 for each and every offense.

The Company is liable for \$12,103 in fines, fees and interest, as follows:

- 1) Violation of Idaho Code § 61-401 – \$2,000
- 2) Violation of Idaho Code § 61-610 – \$2,000
- 3) Violation of Idaho Code § 61-1003 – 2 years of failing to report - \$2,000 x 2 = \$4,000
- 4) Violation of Idaho Code § 61-1001 - 2 years of failing to pay - \$2,000 x 2 = \$4,000, and \$100 in regulatory fees, plus \$3 in interest.

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<sup>1</sup> The \$50 amount represents the minimum assessment because Commission staff is unable to calculate an accurate assessment amount due to the Company's failure to submit annual verified returns.

Furthermore, Idaho Code § 61-707 states:

Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand or requirement of the commission, under the provisions of this act, or any part or portion thereof, by any public utility, corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

Should the Company fail to comply with this order to show cause in the manner prescribed, it shall be liable for an independent violation of Idaho Code § 61-706, which carries a penalty of \$2,000. Failure to comply with this order to show cause will result in a continuing violation and will accrue a penalty of \$2,000 per day until the Company satisfies the order to show cause

### **ORDER**

Accordingly, based on the evidence before the Commission, and good cause appearing, IT IS HEREBY ORDERED that the Utility shall appear before the Commission on December 17, 2018, to show cause why the following relief should not be granted by summary order of the Commission:

1. Order Atlanta Power Company to immediately pay the current entire outstanding annual fee amount of \$100, and \$3 in interest;
2. Order Atlanta Power Company to immediately file its statutorily required annual verified returns for 2017 and 2018;
3. Order the imposition of civil penalties pursuant to Idaho Code § 61-706 of \$2,000 for each and every offense, totaling \$12,000.
4. Direct the attorney of the commission to initiate an action in District Court to enforce the determination of the Commission, consistent with Idaho Code § 61-705 and § 61-1005.



DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this  
day of November 2018.

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PAUL KJELLANDER, PRESIDENT

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KRISTINE RAPER, COMMISSIONER

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ERIC ANDERSON, COMMISSIONER

ATTEST:

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Diane M. Hanian  
Commission Secretary

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ORDER NO. \_\_\_\_\_

BRANDON KARPEN, ISB No. 7956  
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Public Utilities Commission  
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*Attorney for the Staff of the Public Utilities Commission*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION ) CASE NO. ATL-E-18-01**  
**OF ATLANTA POWER COMPANY )**  
**SERVICE AND CUSTOMER RELATIONS ) AFFIDAVIT OF JOHNATHAN**  
**) FARLEY SUPPORT OF ORDER**  
**) TO SHOW CAUSE**  
**)**

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JOHNATHAN FARLEY, being duly sworn, stated:

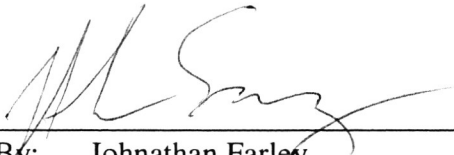
1. My name is Johnathan Farley. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated herein.
2. I am a Utilities Compliance Investigator at Idaho Public Utilities Commission. I started working in this position in June 2015. I am responsible for leading the investigation into the service reliability, maintenance and operations, and customer relations of Atlanta Power Company.
3. On February 21, 2018, the Commission issues, by certified mail, a summons to Atlanta Power Company notifying it that a Complaint had been filed against the Company, that the Commission had order a Staff investigation into service reliability, maintenance and operations, and customer relations of the Company. The Summons directed the Company to file a written answer or written motion in defense of the Complaint within twenty-one days. To date, the Company has not filed a written answer or motion in response to the summons.
4. On March 8, 2018, the Commission issued, by certified mail, a second copy of the summons to Atlanta Power Company directing the Company to file a written answer or written motion in defense of the Complaint. Simultaneously, a summons was mailed to the Company's only employee. To date, the Company has not filed a written answer or motion in response to the summons.

5. On March 16, 2018, Staff propounded 14 production requests on the Company by certified mail. To date, the Company has not filed any answers or responses to the production requests.

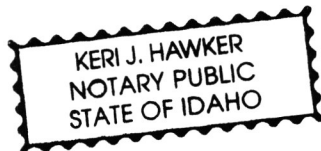
6. On April 6, 2018, the Atlanta Water Association, and the Atlanta Landowner's Association (jointly, "AWA/ALA") intervened as parties in this case, which was granted on April 19, 2018. Order No. 34036. On May 7, 2018, AWA/ALA propounded 3 production requests on the Company. An Atlanta Power Company employee responded to the request reporting that the Company's owner, Israel Ray, was the only person with access to the requested information, and otherwise denied access to the requested information. Accordingly, to date, the Company has not filed any answers to the production requests.

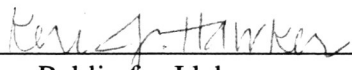
7. On August 7, 2018, Staff mailed a Mr. Ray a letter notifying him that failing to respond to the Commission's summons, and the production requests may cause the Company to incur fines for failing to comply with a Commission order, and Idaho Public Utilities Law. Staff attached a copy of the Commission summons, and the production requests to the letter. To date, the Company has not filed a written answer or motion in response to the summons, or provided Staff with any answer to its production requests.

Dated this 16 day of November, 2018.

  
By: Johnathan Farley  
Utilities Compliance Investigator  
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of November, 2018.



  
Notary Public for Idaho  
My commission expires on 12/21/2018

BRANDON KARPEN, ISB No. 7956  
Deputy Attorney General  
State of Idaho  
Public Utilities Commission  
472 W Washington  
P.O. Box 83720  
Boise, Idaho 83720-0074  
Telephone: (208) 334-0357  
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*Attorney for the Staff of the Public Utilities Commission*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION ) CASE NO. ATL-E-18-01**  
**OF ATLANTA POWER COMPANY )**  
**SERVICE AND CUSTOMER RELATIONS ) AFFIDAVIT OF NANCY**  
**) ASHCRAFT IN SUPPORT OF**  
**) ORDER TO SHOW CAUSE**  
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NANCY ASHCRAFT, being duly sworn, stated:

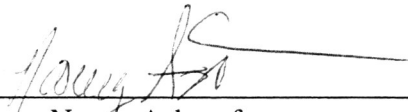
1. My name is Nancy Ashcraft. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated herein.
2. I am a Senior Financial Specialist at Idaho Public Utilities Commission. I started working in this position in January 2016. I am responsible for the billing and collection of annual fees as described in *Idaho Code* §§ 61-1001 through 61-1005.
3. Atlanta Power Company failed to file an annual verified return reporting its annual intrastate gross operating revenue for calendar years 2017 and 2018, as described by *Idaho Code* § 61-1003.
4. In May and November 2017, Atlanta Power Company failed or refused to pay an assumed regulatory fee of \$50. The amount is assumed because pursuant to *Idaho Code* § 61-1004, \$50 is the minimum assessment that may be charged to a utility. This amount was billed because Commission staff was unable to calculate an accurate regulatory assessment amount due the Company's failure to submit an annual verified return.
5. In May and November 2018, Atlanta Power Company failed or refused to pay an assumed annual regulatory fee of \$50.00. Again, the amount is assumed because pursuant to *Idaho Code* § 61-1004, \$50 is the minimum assessment that may be charged to a utility. This amount was billed because Commission staff was unable to calculate an accurate regulatory assessment amount due the Company's failure to submit an annual verified return.

6. In February 2018, Atlanta Power was assessed \$3.00 in interest on its outstanding balance of \$50 (6%).

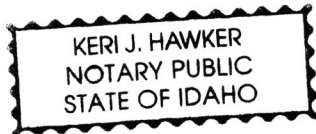
7. Currently, Atlanta Power Company owes the Commission \$103 in fees and interest charges.

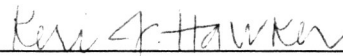
8. On multiple occasions, Staff has attempted to obtain the Company's verified returns and collect its past due annual fees by sending invoices, demand letters, and notification that failure to comply would result in legal action.

Dated this 16 day of November, 2018.

  
By: Nancy Ashcraft  
Senior Financial Specialist  
Idaho Public Utilities Commission

SUBSCRIBED AND SWORN to before me this 16th day of November, 2018.



  
Notary Public for Idaho  
My commission expires on 12/21/2018