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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE INVESTIGATION)
OF ATLANTA POWER COMPANY SERVICE) CASE NO. ATL-E-18-01
AND CUSTOMER RELATIONS)
)
) CROSS-PETITION FOR
) RECONSIDERATION
)
_____)**

STATEMENT OF FACTS

On January 2, 2018, Atlanta Power customer, Mary Drake, formally complained to the Commission that the Atlanta Power Company was not maintaining adequate service as required by *Idaho Code* § 61-302.

On February 20, 2018, the Commission ordered its Staff to investigate the Company's service reliability, maintenance and operations, and customer relations, and to report the investigation's results to the Commission. The Commission also ordered the Company to respond to Ms. Drake's formal complaint within 21 days of the service date of the Summons, and to respond to Staff's investigative efforts. Order No. 33988.

On April 2, 2018, the Commission ordered the Company to immediately repair a downed service line that was reported to the Commission by Company customers on March 14, 2018. The Commission also ordered Staff to investigate and report on health and safety issues related to Atlanta Power. Order No. 34017.

On April 16, 2018, Staff completed a Safety Report in compliance with Order No. 34017. This report was attached to Staff's May 10, 2018 Decision Memorandum on this matter.

On April 19, 2018, the Commission granted a petition to intervene filed by Atlanta Water Association, Inc. and Atlanta Landowner's Association. Order No. 34036. Both entities are represented by the same attorney.

On December 28, 2018, Staff filed a report fulfilling its obligations under Order Nos. 33988 and 34017. Among other things, Staff reported the Company had failed to file statutorily required annual gross receipts reports and pay annual regulatory fees.

On January 25, 2019, the Commission issued a Notice of Hearing & Order to Show Cause ordering the Company to appear before the Commission on February 19, 2019, and show cause why the Company should not be fined for failing to fulfill various statutory obligations. Order No. 34209.

On February 19, 2019, the Show Cause Hearing was held as scheduled. The attorney for Atlanta Water Association, Inc. and Atlanta Landowner's Association was present. Commission Staff's attorney also was present. No representatives of Atlanta Power or the complainant were present.

On April 2, 2019, the Commission issued an Order levying fines against the Company for failing to respond to the formal complaint against it, failing to fulfill statutory duties, and failing to appear at the Show Cause Hearing. The Commission ordered the Company to file verified returns, and pay \$12,103 by April 26, 2019, or incur an additional penalty of \$2,000 per day until the Company's obligations were satisfied. Order No. 34296.

On April 24, 2019, the Company, Israel Ray, and his brother Gene Ray, met with Commission Staff regarding the complaints against the Company and the fine levied against the Company. The Rays insisted the Company was now running better than ever. Israel Ray advised Staff that the Company's address for purposes of service should be changed from 11140 Chicken Dinner Rd, Caldwell, Idaho to 1275 Dolphin Way, Fairbanks, Alaska. Staff also informed the Rays that the Idaho Secretary of State's Office shows the Company has been administratively dissolved for years.

Staff also explained that because the annual fee is based on a utility's gross receipts, and the Company had not filed reports showing gross receipts for calendar years 2016 and 2017, the Commission had required the Company to pay the minimum statutory fee of \$50 per year for two years, plus interest, for total fees with interest of \$103. Israel Ray paid \$159.18 to the Commission, which was the back due amount plus additional accumulated interest, along with

the minimum statutory fee for 2018. Ray stated that he would contact his bookkeeper to get the necessary information to file the Company's annual verified returns showing gross receipts for all outstanding years. Later that day, Atlanta Power filed a Petition for Reconsideration of Order No. 34296 with the Commission.

On April 29, 2019, the Commission received the annual verified returns showing gross receipts from Atlanta Power for 2016, 2017, and 2018. A true-up of the annual fees is now required based on the actual gross receipts for 2016, 2017, and 2018.

DISCUSSION

Staff requests the Commission grant reconsideration. In light of the Company's efforts to address the concerns raised by the Commission in Order No. 34296, and because Staff believes the fined amount would be better served addressing the needs of the Company's electric system, Staff believes it would be unreasonable to impose the \$12,000 in fines levied in Order No. 34296 at this time. If the Commission grants reconsideration, then Staff intends to offer argument and evidence that this money could be better spent on system upgrades or an emergency reserve that would result in safer and more reliable operations.

At the April 24, 2019 meeting between Commission Staff and Atlanta Power, the Company signaled to Staff a willingness to sell the system, pending agreement on price and terms with another entity. Staff believes it could be in the public interest for the Company to sell the system to another entity, and that this option should be explored fully.

Atlanta Power, as currently configured, is an electrical corporation and public utility as defined in *Idaho Code* §§ 61-119 and -129, which subjects the Company to the Commission's jurisdiction and obligates the Company to comply with Title 61 of Idaho Code. Over the years, the Commission has reviewed complaints alleging Atlanta Power had violated various aspects of Title 61. *See e.g.*, Case Nos. ATL-E-03-01 and ATL-E-09-01. Staff recognizes the town of Atlanta's unique attributes—such as its geographic isolation in rugged terrain and small population size—make it challenging for the Company to sustain an economical power distribution system in a safe and adequate manner and to fulfill its Title 61 obligations.

If the Company agrees to sell its system to another entity, that sale cannot be finalized until it is approved by the Commission under *Idaho Code* § 61-328. The buyer would need to show it has the bona fide intent and financial ability to operate and maintain the system in the


public service, that the cost of and rates for supplying service will not increase as a result of the transaction, and that the transaction is consistent with the public interest.

Staff notes that if the buyer is an entity that is excluded from the definition of a regulated electrical corporation or public utility under *Idaho Code* §§ 61-119 and -129, such as an entity not “operating or managing [an] electric plant for compensation,” then the buyer would not be subject to the Commission’s jurisdiction under Title 61 of Idaho Code. Electrical cooperatives, for example, typically fall outside the Commission’s jurisdiction.

CONCLUSION

Staff believes granting the Petition for Reconsideration filed by Atlanta Power would allow the Commission to determine the most reasonable use for the fined amount. If the Commission does grant reconsideration, Staff requests the Commission set a timeline for reconsideration that would be long enough to provide opportunity for Atlanta Power to negotiate an agreement to sell the utility to another entity.

Respectfully submitted this 1st day of May 2019.



Edward Jewell
Deputy Attorney General

i:umisc/comments/atle18.1ej cross petition for reconsideration

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 1ST DAY OF MAY 2019, SERVED THE FOREGOING **CROSS-PETITION FOR RECONSIDERATION**, IN CASE NO. ATL-E-18-01, BY E-MAILING AND MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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