

EDWARD JEWELL  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0314  
IDAHO BAR NO. 10446

RECEIVED  
2019 JUL 18 PM 2:11  
IDAHO PUBLIC  
UTILITIES COMMISSION

Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5918

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 )**  
**)**  
**)** **COMMENTS ON**  
**)** **RECONSIDERATION**  
**)**

---

**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, Edward Jewell, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On April 2, 2019, the Commission ordered Atlanta Power Company (“Atlanta Power” or “Company”) to file past due statements of operating revenues, pay past due fees and interest, and fined the Company \$12,000 for six violations of the Idaho Public Utilities Law, specifically violations of *Idaho Code* §§ 61-401, -610, -1001, and -1003. Order No. 34296.

On May 10, 2019, the Commission granted reconsideration of Order No. 34296, and suspended imposition of the \$12,000 penalty as of the date the petition for reconsideration was filed by Atlanta Power. Order No. 34334. The Commission also ordered the Company to participate in a settlement conference with interested parties regarding the possible sale of the Company’s assets, and ordered Commission Staff to file a report within 14 days of the settlement conference apprising the Commission on progress. *Id.*

On May 29, 2019, Atlanta Power, Staff, and the Atlanta Electrical Consumers Cooperative (“Co-Op”) participated in a settlement conference. On June 12, 2019, Staff filed a Staff Report with the Commission. Staff noted that the Company and the Co-Op had both made good faith efforts toward reaching an agreement.

In Order No. 34334, the Commission also ordered the Company to file its statements of gross intrastate operating revenue with the Commission, pay its past due regulatory assessments, and provide current telephone numbers for an onsite operator and Company management. The Company filed its statements of gross intrastate operating revenue for years 2016, 2017, and 2018, and paid its past due regulatory assessments within the timeline ordered by the Commission. The Company stated all its customers know the onsite operator and how to contact him.

The Commission requested comment during the reconsideration period on 1) whether the fine was correctly imposed based on the findings of fact and conclusions of law in Order No. 34296; 2) whether new facts have arisen since the Commission issued Order No. 34296 that would make the fine no longer just and reasonable; and 3) if the fine was properly assessed and continues to be just and reasonable, should the Commission make the full fine payable to the state treasury to the credit of the general fund under *Idaho Code* § 61-712 or should the Commission seek to compromise the penalty under *Idaho Code* § 61-712B? Order No. 34365 at 2. Staff now responds to the questions posed by the Commission.

## **STAFF ANALYSIS**

Staff makes its comments based on the underlying facts that led to the fine imposed in Order No. 34296, and subsequent interactions with the Company. It is Staff’s belief that a sale of Atlanta Power’s assets to the Co-Op is in the best interest of the customers of Atlanta Power. Staff believes that a mutually agreed upon sale would likely result in safer and more adequate service to customers, and greater accountability. Staff has participated in settlement conferences between the Company and the Co-Op and has made efforts to facilitate a transaction. It is Staff’s understanding that the parties have an agreement in principle and will be entering a Memorandum of Understanding shortly, with a full contract to follow, which will be submitted to the Commission for approval or denial pursuant to *Idaho Code* § 61-328. Given the likely but uncertain success of negotiations for the sale of the Company’s assets, Staff believes imposing

the fine would add further uncertainty and may disrupt negotiations at a critical time. Further, Staff believes the underlying causes of the penalty would be addressed through a sale of the Company's assets to new owners, and therefore the intent of the Commission in Order No. 34296 would be achieved without collecting the fine.

**1) Was the fine correctly imposed based on the findings of fact and conclusions of law in Order No. 34296?**

Yes. The Commission found the Company was in violation of numerous statutory administrative requirements, including: 1) repeated failures to comply with Commission requests, directives, orders, and summonses and failure to respond to inquiries from Commission Staff under *Idaho Code* §§ 61-401, -406; 2) refusing to allow Commission Staff to examine and audit the Company's documents under *Idaho Code* § 61-602, -603, and -610; and 3) the Company's failure to file annual verified returns showing gross operating revenues in 2017 and 2018 under *Idaho Code* 61-1001 and -1003. Staff continues to believe that the facts support the Commission's findings and the law was correctly applied.

Staff notes there is still an outstanding complaint against the Company for failure to provide safe and adequate service, and the fined amount does not include penalties for potential violations related to the adequacy and safety of the Company's electrical system. Staff believes additional penalties for failure to provide adequate and safe service could be determined in a subsequent proceeding, if the parties are unable to reach mutually agreeable terms for the transfer of the Company's assets.

**2) Have new facts arisen since the Commission issued Order No. 34296 that would make the fine no longer just and reasonable?**

Yes. Staff believes that a deal to transfer the Company's assets is likely, and that a transfer of the Company's assets to new ownership is the most effective means to resolve the deficiencies that led to the fine being imposed in Order No. 34296. Therefore, Staff recommends the Commission find that the fine is no longer just and reasonable.

**3) If the fine was properly assessed and continues to be just and reasonable, should the Commission make the full fine payable to the state treasury to the credit of the general fund, or should the Commission compromise the penalty?**

If the Commission determines the fine was properly assessed and continues to be just and reasonable, Staff recommends the Commission require the Company to place the fined amount in a reserve account to be used by the potential new owners to repair the system. Staff believes the system requires significant investment in order to function safely and adequately. *See STAFF REPORT Case No. ATL-E-18-01, December 28, 2018.* Therefore, Staff believes another suitable option would be to require the current owners to make investments in the system equal to the fined amount. However, Staff believes it would be difficult to verify the improvements were made given the history of non-compliance with reporting requirements demonstrated by the Company. Due to the need for investments to the system, Staff believes that payment of the fine to the state treasury is not the best option in this situation.

**STAFF RECOMMENDATION**

Staff recommends the Commission not impose the fine in order to avoid disruption to the final stages of negotiation for the transfer of Atlanta Power's assets to the Atlanta Electrical Consumer's Co-Op. Staff believes the deficiencies that led to the fine being imposed would be resolved through a sale of the Company's assets. However, if the Commission does decide to impose the fine, Staff recommends the Commission require Atlanta Power to set the money aside in a reserve account to be used for necessary improvements to the system.

Respectfully submitted this <sup>18<sup>th</sup></sup> day of July 2019.

  
\_\_\_\_\_  
Edward Jewell  
Deputy Attorney General

i:umisc/comments/atle18.1ej comments on reconsideration

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 18<sup>TH</sup> DAY OF JULY 2019, SERVED THE FOREGOING **COMMENTS ON RECONSIDERATION**, IN CASE NO. ATL-E-18-01, BY E-MAILING AND MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

ISRAEL RAY  
ATLANTA POWER COMPANY  
11140 CHICKEN DINNER RD  
CALDWELL ID 83607

ISRAEL RAY  
ATLANTA POWER COMPANY  
1275 DOLPHIN WAY  
FAIRBANKS AK 99709

**ELECTRONIC SERVICE ONLY**  
ATLANTA WATER ASSOC INC  
[theamyobrien@gmail.com](mailto:theamyobrien@gmail.com)  
[dvance.awa@gmail.com](mailto:dvance.awa@gmail.com)  
[rickandevyjenkins@gmail.com](mailto:rickandevyjenkins@gmail.com)  
[jpdeb@rtci.net](mailto:jpdeb@rtci.net)

STEVEN J MEADE  
ATLANTA WATER ASSOC INC  
PO BOX 1097  
BOISE ID 83701  
E-MAIL: [smeade@idalaw.com](mailto:smeade@idalaw.com)

**ELECTRONIC SERVICE ONLY**  
ATLANTA LANDOWNER'S ASSOC  
[bygreylock@wildblue.net](mailto:bygreylock@wildblue.net)  
[andy.epperson@gmail.com](mailto:andy.epperson@gmail.com)  
[matt@boiseinfill.com](mailto:matt@boiseinfill.com)  
[jgilles@cableone.net](mailto:jgilles@cableone.net)

STEVEN J MEADE  
ATLANTA LANDOWNER'S ASSOC  
PO BOX 1097  
BOISE ID 83701  
E-MAIL: [smeade@idalaw.com](mailto:smeade@idalaw.com)

**ELECTRONIC SERVICE ONLY**  
ATLANTA LAND OWNER  
[steve@pumpkincreekranch.com](mailto:steve@pumpkincreekranch.com)

**ELECTRONIC SERVICE ONLY**  
ATLANTA ELECTRICAL CONSUMER  
CO-OP INC  
[PDFD247@yahoo.com](mailto:PDFD247@yahoo.com)  
[joyonemartinez@gmail.com](mailto:joyonemartinez@gmail.com)  
[gregoryhahn@gmail.com](mailto:gregoryhahn@gmail.com)  
[jgilles@cableone.net](mailto:jgilles@cableone.net)

  
\_\_\_\_\_  
SECRETARY