

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION) CASE NOS. ATL-E-22-01
OF ATLANTA POWER COMPANY) ATL-E-21-01
SERVICE AND CUSTOMER RELATIONS)
) ORDER NO. 35465
)

On January 24, 2022, the Commission issued a Notice of Hearing and Order to Show Cause (“OSC”) requiring Atlanta Power Company, Inc. (“Atlanta Power” or “Company”) to appear before the Commission on February 23, 2022, to show cause why the Commission should not: (1) reimpose penalties on the Company resulting from Case No. ATL-E-18-01, Order No. 34296; (2) impose new penalties on the Company for new and continuing violations; and (3) open a new investigation into whether the Company is providing safe and adequate service to its customers. Order No. 35302 at 1. The Commission further directed the Company to appear and show cause why a receiver or other similar relief should not be employed to operate the Company due to its continued failure to comply with Idaho statutes and the Commission’s regulatory authority to ensure the provision of safe and reliable service. *Id.*

As part of a companion case, on January 24, 2022, the Commission also issued a Summons requiring Atlanta Power to answer allegations made in a formal complaint (“Complaint”) by Mary E. Drake, a customer of the Company. *See* Case No. ATL-E-21-01.¹

On February 18, 2022, the Company responded to the Commission’s inquiries. The Commission also received five public comments. On February 23, 2022, Israel James Ray, the owner of the Company and Arnold Eugene Haught, who works for the Company, provided testimony to the Commission in response to the OSC.

Having reviewed the record and the testimony given by Company representatives, the Commission now issues this Final Order imposing penalties on the Company and suspending said penalties so long as the Company complies with the conditions set forth herein.

¹ On September 20, 2021, the Commission allowed the Atlanta Electrical Consumer Cooperative, Inc., (“AECC”) to intervene in Case No. ATL-E-21-01. Order No. 35172.

BACKGROUND

In the spring of 2017, Commission Staff (“Staff”) received complaints from customers of Atlanta Power raising concerns about the electric service provided by the Company. Order No. 33988 at 1. Those customers alleged the Company’s hydroelectric turbine was not working and the Company was using a diesel generator to provide electric service. *Id.* Customers also reported that the generator was regularly running out of fuel and electric service outages were occurring frequently for long periods of time. *Id.* Staff continued to receive complaints throughout 2017 about inadequate service and outages, and the inability of customers to contact anyone from the Company. *Id.*

On January 2, 2018, Ms. Drake, filed a formal complaint that initiated Case No. ATL-E-18-01, alleging that the Company was not providing safe and adequate service to its customers. The Commission ordered the Company to respond to Ms. Drake’s complaint and ordered Staff to:

conduct an investigation into the service reliability, maintenance and operations, and customer relations of Atlanta Power Company. Staff shall provide a report and recommendations to the Commission for further action no later than July 31, 2018.

Order No. 33988 at 2.

On March 14, 2018, two non-resident customers of the Company alerted Staff to a potentially dangerous situation where another customer’s service line had fallen to the ground. Order No. 34017 at 1. Staff confirmed that the line was down but buried by snow in an inaccessible area off an unplowed road. *Id.* Atlanta residents also reported that the line was not grounding out. *Id.* Staff believed that the downed line did not comply with the National Electric Safety Code. *Id.* On April 2, 2018, the Commission directed the Company to immediately repair the downed line. *Id.* at 2. The Commission further directed Staff to inspect the line and other facilities for other safety issues, and to report to it within sixty (60) days on any other health and safety issues related to the Company. *Id.* Staff later confirmed the repair of the downed line by the Company. *See* Staff Decision Memorandum, dated July 19, 2018.

On December 28, 2018, Staff reported to the Commission detailed descriptions about the condition of the Company’s system (“Report”). Staff noted in its Report that:

[t]he lack of response to Staff’s requests for information (both formal and informal) has impeded Staff’s investigation in this case. Another major impediment to investigating and attempting to resolve this case is that Israel Ray, the only person authorized to do business on behalf of Atlanta Power, has been unavailable, and is apparently unable to perform his duties.

Staff Report at 9. Staff represented that some issues, such as hiring or contracting with people to maintain, operate, and, if necessary, repair the system had been addressed. *Id.* at 4-9. However, Staff remained concerned about several issues, including how the system was being maintained; the condition of lines, poles, and other equipment; maintaining an adequate supply of diesel fuel for the back-up generator; and unresolved safety issues. *Id.*

Due to continuing issues with the safety and adequacy of service the Company was providing customers, the Commission ordered Atlanta Power to appear before the Commission on February 19, 2019, to show cause why the Commission should not summarily order Atlanta Power to immediately: (1) pay the entire outstanding annual fee amount of \$100, and \$3 in interest; (2) file its statutorily required annual verified returns for calendar years 2016 and 2017; and (3) pay civil penalties under *Idaho Code* § 61-706 of \$2,000 each for six violations of the regulatory authorities, totaling \$12,000. Order No. 34209 at 8. The Company did not appear at the show cause hearing on February 19, 2019, as directed by the Commission. Order No. 34296 at 1-2.

On April 2, 2019, the Commission issued Order No. 34296 wherein it found that since February 2018, the Company had repeatedly violated the Commission's directives, orders, and summons. Order No. 34296 at 5. The Commission also found that, despite repeated discovery requests by Staff, Atlanta Power failed to provide any information related to the Company including account information; ownership status, and documents related to customer identities; outages; hydroelectric turbine information; diesel generation information; fuel capacity and purchases; utility equipment information; and Company planning. Order No. 34296 at 5-6. Further, the Commission found that the Company had failed to file annual verified returns in 2017 and 2018 showing its gross operating revenues for 2016 and 2017. Order No. 34296 at 6. Finally, the Commission found that in 2017 and 2018, the Company failed to pay its annual regulatory fee for calendar years 2016 and 2017, respectively. Order No. 34296 at 6. The Commission required the Company to:

1. File the verified returns it had failed to file in 2017 and 2018 that showed its gross operating revenues for calendar years 2016 and 2017;
2. Pay \$103 in past due regulatory fees and interest (i.e., the statutory minimum of \$50 per year for calendar years 2016 and 2017, with \$3 in interest); and
3. Pay \$12,000 in civil penalties for six violations of the Idaho Public Utilities Law, *Idaho Code* §§ 61-401, 610, 1001 and 1003.

Order No. 34296 at 7. The Commission concluded that if the Company failed to comply with Order No. 34296 by April 26, 2019, the Commission would impose additional penalties of \$2,000 per day until the Company satisfied its obligations. *Id.* The Commission also advised the Company that if it failed to comply with Order No. 34296, the Commission might direct its attorneys to sue the Company in District Court to obtain payment, consistent with *Idaho Code* §§ 61-701, 705, and 1005. The Commission stated it might also pursue other actions, such as revoking the Company's Certificate of Public Convenience and Necessity ("CPCN") and franchise to provide electric service, or impose a receivership to wind-up and liquidate the Company. *Id.*

On April 24, 2019, the Company filed a petition for reconsideration asserting that it was attempting to sell the electric system to the community of Atlanta, Idaho. *See Company Petition for Reconsideration.* The Company also alleged that the fine imposed by the Commission in Order No. 34296 would be better invested in the Company's electric system or as a reserve account for a buyer of the system to use for repairs, maintenance, or improvements of the system. *Id.* The Company also represented that it was attempting to comply with Commission orders. *Id.*

On May 10, 2019, the Commission granted the Company's petition for reconsideration in Case No. ATL-E-18-01 based on the Company's desire to facilitate a sale of the Company's system.² Order No. 34334 at 4. The Commission found that the public interest might be served by such a sale. *Id.* The Commission reasoned that imposing the civil penalties called for in Order No. 34296 could impede sale negotiations. *Id.* Because the Commission wished to encourage the Company's efforts to sell the system to a buyer who might better serve customers, the Commission found it reasonable and in the public interest to temporarily suspend the Company's duty to pay the civil penalties imposed in Order No. 34296. *Id.* However, the Commission cautioned the Company that it might revoke the suspension of the Company's penalty payment obligation if the Commission later found the Company had not complied with the terms outlined in Order No. 34334. *Id.* The Commission stated:

[i]f at any time Staff perceives sale negotiations are not progressing in good faith, or that Atlanta Power is not responding to reasonable requests for information, or there is no indicia of progress toward a sale of the Company's assets, then Staff should bring these issues to our attention for consideration in reinstating the Company's obligation to pay the \$12,000 in existing penalties and \$2,000 per day in additional penalties as specified above.

² The Atlanta Water Association, Inc., the Atlanta Landowner's Association, and AECC were granted intervention into Case No. ATL-E-18-01. Order Nos. 34036 and 34343.

Order No. 34334 at 4.

The Commission also ordered Atlanta Power to engage in a settlement conference with the parties in Case No. ATL-E-18-01 within twenty-one (21) days of the service date of Order No. 34334. *Id.* at 5. The purpose of the settlement conference would have been to negotiate a sale of the Company's assets, including its electric system and its CPCN. *Id.* The Commission also stated that if Atlanta Power did not enter good faith negotiations to sell its assets, as it indicated it would in its petition for reconsideration, the conditional suspension of its penalty obligations could be revoked. *Id.* The Commission reminded the Company that the Commission maintained authority to bring Atlanta Power into compliance on not only the Company's administrative failures, but also its requirements to maintain adequate service to promote the health and safety of the public. *Id.* at 6.

On July 1, 2019, the Commission issued Order No. 34365 requesting comments 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.

On August 16, 2019, the Commission issued Order No. 34420 finding that the Commission's conclusions and directives in Order No. 34296 continued to be valid. Order No. 34420 at 3. However, the Commission found that "intervening circumstances—specifically the good faith negotiations and demonstrated progress toward a sale of the Company's assets—lead us to vacate the penalty" imposed on the Company by Order No. 34296. *Id.* The Commission reasoned that a willing sale of the Company's assets to an entity that would be responsive to customers and was committed to providing safe and reliable service to the citizens of Atlanta was the top priority. *Id.* The Commission further found that a sale would address the problems that gave rise to Ms. Drake's formal complaint and would solve the problems that had long beset Atlanta Power. *Id.* The Commission reasoned:

[i]f the sale does not go through, we have numerous tools at our disposal to ensure that Atlanta Power fulfills all of its duties as a regulated public utility. Those duties include but are not limited to: providing safe and reliable service, complying with the National Electric Safety Code, responding to customer complaints in an adequate and timely manner, filing annual reports (both past due and on an ongoing

basis), providing non-discriminatory service throughout its service area, and complying with audit and production requests from Commission Staff. We intend to closely monitor Atlanta Power, as long as it remains a regulated public utility, to guarantee that the Company meets its obligations to its customers.

Order No. 34220 at 3.

THE 2022 NOTICE OF INVESTIGATION & ORDER TO SHOW CAUSE

In the OSC, the Commission found that the Company “ha[d] repeatedly violated the Commission’s authorities, including failing to timely file [gross intrastate operating revenue] reports, annual reports and to pay utility assessments on time.” Order No. 35302 at 9. The Commission also found that “[t]he Company failed to file timely annual verified returns in 2020 and 2021 showing its gross operating revenues for 2019 and 2020.” *Id.* The Commission also found that in 2020 and 2021, the Company failed to timely pay its annual regulatory fee for calendar years 2019 and 2020. *Id.* The Commission further found that the Company had filed its verified returns for 2019 and 2020 and brought its assessment payments current; however, that compliance was untimely. *Id.*

The Commission directed the Company to appear and show cause why the Commission should not order the Company to pay penalties immediately for violations of the Public Utilities Laws. *Id.* at 13-14. The Commission also noted its continuing concerns that it wanted the Company to address at the show cause hearing, specifically, customer complaints that the Commission had previously ordered the Company to address, the Company’s continued failure to comply with basic regulatory requirements, the condition of the Company’s system, whether the Company was still in negotiations with AECC, and numerous safety concerns. *Id.* at 11-12. The Commission stated it continued to believe that a sale of the Company’s assets to an entity that would provide safe and reliable service and be responsive to customers and the public was a top priority. *Id.* at 10.

THE 2022 SHOW CAUSE HEARING

On February 23, 2022, the Commission held a Show Cause Hearing (“Hearing”) where Mr. Ray testified on behalf of the Company.³ During the Hearing, the Commission focused on four main issues: (1) whether the company was still in negotiations with AECC or another third party for the sale of the Company; (2) investigations regarding the Company’s safe and reliable service and the issue of potential receivership; (3) identification of reliable contact information for the Company; and (4) appraisal of the Company’s value.

³ On February 18, 2022, Mr. Ray filed a written response to the Commission’s Order No. 35302.

1. Negotiations with AECC or Another Third Party

During the Hearing, Mr. Ray testified that he had ongoing discussions with AECC⁴ about a sale of the Company's system, but negotiations fell through due to a disagreement about where to move a diesel generator and other equipment which was currently located upon Mr. Ray's real property. *Company Response to the OSC* at ¶ 5; *Hearing Transcript* at 9-11. The Commission had previously ordered Mr. Ray to negotiate the sale of the Company in good faith. Order No. 34334 at 4.

Mr. Ray testified that he was no longer in negotiations with AECC and that the Company was in the process of negotiating a sale to a different party, identified as Mr. Haught and Nick Jones. *Hearing Transcript* at 13, 20; *Company Response to the OSC* at ¶ 2. The Company submitted a letter of intent signifying that Mr. Haught, Mr. Jones, and Mr. Ray had come to an agreement on the sale of the Company. *Letter of Intent* at 1. Mr. Ray testified that "even though the appraisal is higher, [he] is accepting [a purchase price of \$365,000 from Mr. Haught and Mr. Jones]." *OSC Transcript* at 17.

2. Investigations Regarding Safe and Reliable Service & The Issue of Receivership

Under Idaho Code a public utility regulated by the Commission must provide safe and adequate service. *Idaho Code* § 61-312; Order Nos. 35302, 34296, and 34334. Accordingly, in Case No. ATL-E-18-01, the Commission initiated an investigation into the Company's practices as a regulated utility and Staff produced a report of its findings on December 28, 2018. During the Hearing, the Commission expressed concern that the Company's system had not improved since Staff's filed its report. The Commission asked Mr. Ray why a receiver should not be appointed to operate the Company based upon its failure to comply with Idaho statutes and the Commission's previous Orders. *Hearing Transcript* at 17.

Mr. Ray testified that the issues of safe and reliable service and receivership were addressed by the fact that Mr. Jones, a trained lineman, and Mr. Haught had been assisting the Company in making line repairs. *Id.* at 12, 18. Mr. Haught also testified that he had been taking care of the system since 2018 and that several repairs had been made in that time, transformers had been ordered to replace old transformers, and many telephone-poles had been replaced. *Id.* at 24-26, 34. Mr. Haught explained that many of the safety issues addressed in Staff's report had been addressed. *Id.* at 32. Mr. Haught also stated that he and Mr. Jones were working to correct the remaining

⁴ AECC was originally negotiating a purchase of the Company from Mr. Ray. *See* Order No. 34334.

issues and estimated that they could have 80 percent of the repairs completed within five years. *Id.* Mr. Haught stated his main concerns involved the antiquated transformers, too many houses on one transformer, and old copper distribution lines. *Id.* Mr. Haught stated that with the assistance of Mr. Jones, he planned to replace or repair these issues within five years. *Id.* Mr. Haught further testified that he and Mr. Jones had the financial wherewithal to support this five-year plan when factoring in the income from the system. *Id.* Mr. Haught testified that after completing the five-year plan to repair the system, he believed that the system would provide safe and adequate service to customers. *Id.* at 34-35.

3. Company Contact Information

In Order No. 35302, the Commission directed the Company to “provide the Commission with reliable contact information (phone number(s), fax number(s), email addresses, mailing addresses and physical addresses) that will allow the Company’s customers to contact it.” Order No. 35302 at 12. In the Company’s written response, the Company provided the contact information for Mr. Haught. *Company’s Response to the OSC* at ¶ 4. The Company stated that if Mr. Haught was unable to connect with Mr. Ray, that Mr. Haught would call Mr. Ray’s daughter. *Id.* At the Hearing, Mr. Ray identified that Sara True was a point of contact for the Company and provided her residence and contact information. *Hearing Transcript* at 19.

4. The Appraisal of the Company

In Order No. 35302, the Commission directed the Company to provide a copy of an appraisal and any other associated studies or surveys at the Hearing. Order No. 35302 at 11. During the Hearing Mr. Ray testified that he did not have a copy of the appraisal with him and did not indicate whether he would provide the Commission with one. *Hearing Transcript* at 21.

PUBLIC COMMENTS

A. Mary Drake

In Case No. ATL-E-22-01, Ms. Drake provided historical details regarding the on-going service and reliability issues with the Company. *Mary Drake Comments* (02/22/2022). Ms. Drake stated, “several of the issues in [her] initial Formal Complaint have been resolved.” *Id.* at 2. Ms. Drake stated that Mr. Haught recruited Mr. Jones, a training specialist at Northwestern Lineman College in Meridian, Idaho, to help repair downed lines and fix power issues. *Id.* Ms. Drake then recounted several incidents from 2021 and 2022 in which power issues occurred but were fixed or addressed almost immediately by Mr. Haught and Mr. Jones. *Id.* Ms. Drake represented that

recently, Mr. Ray had proven to be responsive and available with necessary funds to assist in necessary repairs. *Id.* at 3. Ms. Drake stated that Mr. Haught and Jones had been available to provide excellent customer service and maintenance on the power system. *Id.* Finally, Ms. Drake noted that her only continuing concerns related to the Company's outdated equipment. *Id.* Ms. Drake also stated that she preferred more than one point of contact for the Company. *Id.*

B. Steven Meade

Steven Meade stated that according to the Staff Report dated June 12, 2019, "both parties agreed to utilize Scott Kaster [as an Appraiser.]"⁵ *Id.* Mr. Meade confirmed he sent the copy of the appraisal to Mr. Ray. *Id.* Mr. Meade stated that he and others met with Mr. Ray, Gene Ray, and Staff to discuss the appraisal and "see if we could come to an agreement." *Id.* Mr. Meade represented that he and Mike Gillespie offered Mr. Ray and his brother, Gene Ray, \$300,000 to purchase the Company, which Mr. Ray agreed to. *Id.* Mr. Meade then stated that he drafted an agreement of sale and a proposed bill of sale which was sent to Mr. Ray. *Id.* Mr. Meade represented that although some discussions occurred with Mr. Ray about the contents of the agreement of sale, Mr. Ray did not offer any proposed modifications. *Id.* After this Mr. Meade stated that he did not have contact with Mr. Ray for some time. *Id.*

Mr. Meade asserted that the relationship between he and Mr. Ray deteriorated. *Id.* at 2. Mr. Meade stated that he attempted to acquire funding to purchase the Company through different lenders but was unable to do so because he was unable to show "two years' worth of books." *Id.* Mr. Meade also stated that he struggled to obtain financing from other sources because he could not provide history of revenue or expenses. *Id.*

Mr. Meade stated that he had a verbal agreement with Mr. Jones to purchase the Company and that "after two years, he would apply to the U.S.D.A. Rural and borrow money to pay Mr. Jones back." *Id.* Mr. Meade stated that he approached Mr. Ray again about purchasing the Company through the agreement reached with Mr. Jones; however, Mr. Ray did not respond. *Id.*

Mr. Meade also alleged that Mr. Ray was "using [the Company] as his own personal piggy bank." *Id.* Mr. Meade represented that the agreement between Mr. Ray, Mr. Haught, and Mr. Jones was "in [his] opinion a shell game" that Mr. Ray would use to lead the Commission on and "bleed the Company dry living off the earnings, while continuing to [operate the Company] on a shoe-

⁵ Steven Meade is an attorney in Idaho and founder of AECC in Atlanta by which he desired to purchase the Company from Israel Ray. In the previous cases and Commission findings, the original sale negotiations involved Mr. Meade.

string budget.” *Id.* at 3. Mr. Meade then stated that he supported the Commission imposing a receiver and fines upon the Company and asked the Commission to require a professional mediator to further negotiate the sale of the Company. *Id.*

C. Other Public Comments

Allen Lake expressed positive opinions on the Company. *Allen Lake Comments* (02/22/2022). Mr. Lake stated that he had seen steady improvement in the electrical system since Mr. Haught and Mr. Jones had taken over the maintenance of the Company’s system. Mr. Lake also stated that he supported the purchase of the Company by Mr. Haught and Mr. Jones. *Id.*

Robert Bartimoccia filed comments which expressed positive opinions on the sale of the Company. *Robert Bartimoccia Comments* (02/23/2022) at 4. Mr. Bartimoccia expressed support for the sale of the Company to Mr. Haught and Mr. Jones, reasoning that Mr. Haught had continuously made improvements to the Company’s system. *Id.*

Sandy Nye filed comments which expressed that the addition of Mr. Haught and Mr. Jones has led to Ms. Nye receiving the best and most reliable power that Ms. Nye has received in forty-seven years from the Company. *Sandy Nye Comments* (02/28/2022).

COMMISSION DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter under *Idaho Codes* §§ 61-119, -129, -101, -302, -406, -501, -515, and -701. The Company is an electrical corporation as defined in *Idaho Code* § 61-119, and a public utility as defined in *Idaho Code* § 61-129. The Commission has authority to supervise and regulate every public utility within the State of Idaho and do all things necessary to carry out the spirit and intent of the Public Utility Law. *Idaho Code* § 61-501. The Commission has the authority to enforce Public Utility Laws and impose penalties upon utilities for failing to act in accordance with those laws. *See Idaho Code* §§ 61-406 and -701. As a public utility furnishing electric power to customers within the State of Idaho, the Company must furnish, provide, and maintain such service, instrumentalities, equipment, and facilities that are adequate, efficient, just, and reasonable and promote the safety, health, comfort, and convenience of its patrons, employees, and the public. *Idaho Code* § 61-302. Accordingly, when the Company fails to comply with these statutory mandates, the Commission may require the Company to maintain and operate its equipment and entire system in such manner as to promote the health and safety of its employees and to that end, require the installation, use, maintenance, and operation of appropriate safety standards. *Idaho Code* § 61-515.

1. Violations of Idaho Code

a. Idaho Code § 61-405

Pursuant to *Idaho Code* § 61-405, “[e]very public utility shall file an annual report with the commission, verified by the oath of an officer thereof. . . . The originals of the reports subscribed to and sworn to as prescribed by law, shall be filed on or before the fifteenth day of April in each year and preserved in the office of the commission.” Having reviewed the record, the Commission finds that the Company has failed to provide its Annual Reports, as required by *Idaho Code* § 61-405, for the years 2008-2021. *Aff. of Maria Barratt-Riley* at 1. Each failure to comply with the requirements of *Idaho Code* § 61-405 is a distinct and unique violation.

b. Idaho Code §§ 61-401 and 406

Pursuant to *Idaho Code* § 61-401, “[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.” Further, *Idaho Code* § 61-406 provides that “[e]very public utility shall obey and comply with each and every requirement of every order, decision, rule, or regulation made or prescribed by the commission in the matters herein specified, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees.”

Having reviewed the record, the Commission finds that the Company is in violation of *Idaho Code* §§ 61-401 and 406. Specifically, in Order No. 35302, the Commission directed the Company to provide a copy of an appraisal and any other associated studies or surveys at the Hearing. Order No. 35302 at 11. During the Hearing Mr. Ray testified that he did not have a copy of the appraisal with him and did not indicate whether he would provide the Commission with one. *Hearing Transcript* at 21. Further, in the companion case ATL-E-21-01, on January 24, 2022, the Commission directed the Company to file a written answer or motion in defense of Ms. Drake’s Formal Complaint within twenty-one (21) days. The Company did not file a response until February 18, 2022; thus, the Commission finds that the Company failed to timely file a response in that case.

c. Idaho Code §§ 61-1001 and 1003

Idaho Code § 61-1003 requires the Company to file annual verified returns showing gross operating revenues from its utility business in Idaho for the preceding calendar year. *Idaho Code* § 61-1001 requires that the Company pay the Commission an annual regulatory fee based on the Company's annual verified return.

The Commission finds that the Company failed to timely file annual verified returns in 2020 or 2021 showing its gross intrastate operating revenues for 2019 and 2020. *Aff. of Maria Barratt-Riley* at 1; *Suppl. Aff. of Maria Barratt-Riley* at 1. Each failure to comply with the requirements of *Idaho Code* § 61-1003 is a distinct and unique violation. Further, the Commission finds that in 2020 and 2021, the Company failed to timely submit its annual regulatory fees for calendar years 2019 and 2020. *Id.*

2. Calculation of Penalties

Idaho Code provides for monetary civil penalties for violations of the above-referenced statutes. Specifically, *Idaho Code* § 61-706 provides:

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 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.

Further, *Idaho Code* § 61-707 provides:

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.

Having found that the Company has committed violations of the Public Utilities Law as set forth above, the Commission now assesses penalties for those violations as follows.

a. Violations of Idaho Code § 61-405 (\$208,000)

The Company failed to provide its Annual Reports, as required by *Idaho Code* § 61-405, for the years 2008-2021. Each failure to comply with the requirements of *Idaho Code* § 61-405 is a distinct and unique violation. The Commission hereby assesses a penalty of \$2,000 for each of the fourteen (14) violations, for a total penalty of \$28,000. Further, the Company's Annual Report for the year 2021 is past due. As such, pursuant to *Idaho Code* § 61-707 the Commission hereby

assesses a penalty of \$2,000 per day for each day of continued violation. At the time of this decision that amounts to ninety (90) days of violations, for an additional penalty of \$180,000. The total amount of penalties for violations of *Idaho Code* § 61-405 is \$208,000.

b. Violations of *Idaho Code* §§ 61-401 and 406 (\$10,000)

The Company violated *Idaho Code* §§ 61-401 and 406. The Commission hereby assesses a penalty of \$2,000 for the Company's failure to provide a copy of an appraisal and any other associated studies or surveys at the Hearing as ordered by the Commission in Order No. 35302. Further, in the companion case ATL-E-21-01, the Company failed to file a written answer or motion in defense of the Ms. Drake's Formal Complaint within twenty-one (21) days as directed. The Company did not file a response until February 18, 2022. The Commission hereby assesses a penalty of \$2,000 for the initial failure to respond and, pursuant to *Idaho Code* § 61-707, the Commission hereby assesses a penalty of \$2,000 per day for each day of continued violation for February 15, 16, and 17. The total amount of penalties for violations of *Idaho Code* §§ 61-401 and 406 is \$10,000.

c. Violations of *Idaho Code* §§ 61-1001 and 1003 (\$8,000)

The Company failed to timely file annual verified returns in 2020 or 2021 showing its gross intrastate operating revenues for 2019 and 2020. Further, the Company failed to timely submit its annual regulatory fees for calendar years 2019 and 2020. Each failure to comply with the requirements of *Idaho Code* §§ 61-1003 and 1003 is a distinct and unique violation. The Commission hereby assesses a penalty of \$2,000 for each violation. The total amount of penalties for violations of *Idaho Code* §§ 61-1003 and 1003 is \$8,000.

3. Conditions for Suspension of Penalties

While the record shows that the Commission has been exceedingly patient with the Company in this and prior cases, with the Company, the Company continues to violate the authorities that apply to it. The Commission continues to believe that a sale of the Company's assets to an entity that will provide safe and reliable service, and be responsive to customers and the public, remains a top priority. As such, the Commission finds it fair, just, reasonable, and in the public interest to suspend all penalties so long as the Company strictly complies with the following conditions:

- a. Either the Company or purchaser shall hire an attorney to draft a contract and bill of sale for the sale of Company's assets, including its CPCN, to the purchaser.
- b. Either the Company or the purchaser, must submit to the Commission a first draft of the written purchase and sale agreement ("PSA") and any associated documents governing or pertaining to the sale of the Company's assets by 5:00 p.m. local time on August 5, 2022. The PSA must specify binding and essential terms of the sale, include a list of the assets owned by the Company or its owner Israel Ray that are included in the sale, and include the sale price. The PSA must describe contingency plans in the event of default or breach that protects the Company's customers to ensure that, regardless of ownership, the Company continues to provide safe, reliable power and customer service to its customers. The PSA must also include terms of the lease of Mr. Ray's land where the Company's generators are stored. The lease should be long-term, at least as long as the term of a loan taken to purchase the assets of the Company.
- c. The Company must submit copies of the fully executed PSA and any other final, associated documents governing or pertaining to the sale of the Company's assets by 5:00 p.m. local time on August 26, 2022. The PSA must be signed by all necessary parties.
- d. The Company's purchaser must work with Staff to file a case with the Commission seeking approval of the transfer of the Company's CPCN under *Idaho Code* § 61-328 by 5:00 p.m. local time on September 2, 2022.

If the Company fails to comply with or meet the deadlines established by this Order, all suspended, accrued and accruing penalties shall become due immediately, with the accruing penalties calculated from the service date of this Order to the date of failed compliance. If the Company fails to pay those penalties, the Commission will pursue appropriate legal action under Idaho Code. At such time, the Commission may take further action, up to and including the imposition of a receiver upon the Company. The Commission takes this case and matter seriously and will pursue the best outcome for the safety of the Company's customers.

ORDER

IT IS HEREBY ORDERED that the Company must pay its total accrued penalties for violations of Idaho Code in the amount of \$226,000.

IT IS FURTHER ORDERED that the accruing penalties for failing to produce a copy of the Appraisal will continue to accrue at \$2,000 per day until the Company submits the Appraisal or complies with the conditions set forth in this Order. This \$2,000 penalty per day accrues in addition to the \$226,000 total.

IT IS FURTHER ORDERED that the accruing penalties for failing to file the Company's Annual Report for the year 2021 will continue to accrue at \$2,000 per day until the Company complies with *Idaho Code* § 61-405 or complies with the conditions set forth in this Order. This \$2,000 penalty per day accrues in addition to the \$226,000 total.

IT IS FURTHER ORDERED that the entirety of the Company's penalties, both accrued and accruing, shall be suspended so long as the Company strictly complies with the conditions set forth in this Order. The Company and its new purchasers must:

- a. Select an attorney to draft a contract and bill of sale of the Company's assets and CPCN.
- b. Submit to the Commission a first draft of the written PSA and any associated documents governing or pertaining to the terms of the sale of the Company's assets and CPCN by 5:00 p.m. local time on August 5, 2022. The PSA must specify binding and essential terms of the sale that cannot be re-negotiated by either party once entered and that describe a list of the assets owned by the Company or Mr. Ray that are included in the sale. The PSA must contain a contingency plan in the event of default or breach that protects the customers of the Company to ensure that, regardless of ownership, the Company continues to provide safe and reliable power and customer service to its customers. The PSA must also include terms of the lease of Mr. Israel Ray's land whereupon the Company's generators are stored. The lease must be at least as long as the term of the loan used to purchase the assets of the Company.
- c. Submit the fully executed PSA and any associated documents governing or pertaining to the sale of the Company's assets and CPCN by 5:00 p.m. local time

on August 26, 2022. The PSA must be fully executed by all necessary parties, including the buyers.

IT IS FURTHER ORDERED the buyers will work with Commission Staff to file a case seeking Commission approval to transfer of the Company's CPCN by 5:00 p.m. local time on September 2, 2022.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the serve date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th day of July 2022.



ERIC ANDERSON, PRESIDENT

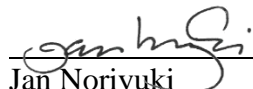


JOHN CHATBURN, COMMISSIONER

//Abstain to Avoid Conflict//

JOHN R. HAMMOND, JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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