

McDevitt & Miller LLP
Lawyers

(208) 343-7500
(208) 336-6912 (Fax)

420 West Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702

RECEIVED
2008 OCT -3 PM 2:55
IDAHO PUBLIC
UTILITIES COMMISSION

Chas. F. McDevitt
Dean J. (Joe) Miller

October 3, 2008

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: Greene Tree, Inc.
Case No. ATL-E-08-2

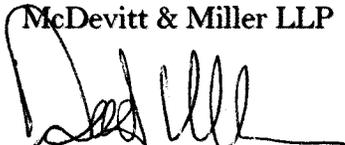
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find the original and seven (7) copies of the Comments of Greene Tree Incorporated.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Enclosures

Dean J. Miller (ISB No. 1968)
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. Box 2564-83701
Boise, ID 83702
Tel: 208.343.7500
Fax: 208.336.6912
joe@mcdevitt-miller.com

RECEIVED
2008 OCT -3 PM 2: 56
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Greene Tree Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION
OF ATLANTA POWER COMPANY FOR AN
ORDER AUTHORIZING INCREASE IN THE
COMPANY'S RATES AND CHARGES FOR
ELECTRIC SERVICE IN THE STATE OF
IDAHO.

Case No. ATL-E-08-2

**COMMENTS OF GREENE TREE
INCORPORATED**

COMES NOW Greene Tree Incorporated ("Greene Tree") and submits the following Comments in response to the Staff Report and Recommendation filed herein on September 18, 2008.

Greene Tree Incorporated

Greene Tree is a Nevada Corporation authorized to do business in the state of Idaho, and is a customer of the Applicant, Atlanta Power Company ("Atlanta Power," or "Company"). Greene Tree is classified as a commercial customer under the Company's Rate Schedule 2, "Permanent Commercial". Greene Tree operates a Family Resort and Retreat property within Atlanta Power's service area. Greene Tree believes it may be the largest commercial customer on the Company's system. In the years 2005, 2006 and 2007, Greene Tree made payments to Atlanta Power for electrical service of \$8,302, \$8,130 and \$11,617, respectively.

The Staff Report

A. Revenue Requirement

Greene Tree has not studied in detail the Staff adjustments leading to its recommended revenue requirement of \$76,770 or a 5.09% increase in revenues, and accordingly, Greene Tree accepts the Staff adjustments.

B. Revenue Allocation and Rate Design

Greene Tree's primary interest in this case focuses on the energy charge contained in the Company's tariffs. Under current rates, the energy charge for residential is \$.050/kWh and \$.180/kWh for commercial.

As discussed in more detail below, the vast discrepancy—almost four to one—between the energy charge for commercial customers and residential customers is unjust and discriminatory, and accordingly, the Commission should equalize the charges between the two classes.

The Staff Report recommends a uniform percent increase to all rate elements, although it identifies two other possibilities—equalizing the energy charge between classes or not increasing the current commercial class energy charge, and by implication thereby indicates these would be reasonable rate design approaches. (See Staff Report, pg. 16 and Attachment F). For the reasons discussed below, a uniform percentage increase is not the best rate design choice in this case and, instead, the Commission should equalize the energy charge for the two customer classes.

Argument

For the purpose of considering Greene Tree's arguments that follow, there are two overarching features of Atlanta Power's electric system that should be borne in mind.

First, almost all of the Company's costs of supplying energy are fixed, not variable. In the course of discovery in this case Greene Tree asked the following discovery question and Atlanta Power made the following response:

Request No. 2. With respect to Exhibit 2 accompanying your Application, please identify the listed categories of expense you consider to reflect variable costs, i.e. those costs which fluctuate depending on the amount of electrical generation produced.

Reply. Fuel expenses vary depending upon the need to use the Company's back-up diesel generator. The Company's commercial general liability Insurance policy premium is based upon the amount of energy produced by the Company. See also our reply to Request No. 1 above. Response prepared by Robert Smith. Wines. Israel Ray, President."

Exhibit 2 to the Company's Application listed total pro formal 2006 operating costs of \$84,852, and identified fuel expense of \$3,111 and insurance cost of \$2,278. Thus 93% of the Company's operating costs are fixed costs ($\$3,111 + \$2,278 / 84,852 = 6.59\%$).

The second feature of the Atlanta Power system is there is no difference in the cost of supplying a kWh of energy to a residential customer and the cost of supplying a kWh of energy to a commercial customer. As Staff notes in its Report:

"Electric utility general rate cases traditionally allocate costs to customer classes using a class cost of service study as a guide. However, coincident peak demand information is required to do such a study and that information is not available. What is known is that there are no transmission costs and that generation costs have a large fixed cost component and a relatively small variable cost component because system generation is provided by hydropower

There are several problems with recovering costs that are fixed through variable charges, not the least of which is that high volume customers provide a subsidy to low volume users, who avoid paying their fair share of fixed costs. The problem is particularly compounded when, as here, high volume users pay a significantly higher rate than low volume users.

While electric utility rate making is not an exact science and there is always the possibility of some minimal or unintended cross-subsidy between customers, at some point the disparity becomes so glaring as to constitute discrimination. Idaho Code 61-315, provides in part:

“Discrimination and preference prohibited.— No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service.”

The current rate structure is also discriminatory because it charges commercial customers an energy charge that is almost four times that charged to residential customers, when there is not any difference in the cost of providing a kWh of energy to customers of either class. In *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Util. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981) the Court defined, in addition to cost of service, relevant considerations that might justify a difference in rate treatment as:

“the quantity of the utility used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the costs of service, the reasonable efficiency and economy of operation and the actual differences in the situation of the consumers for the furnishing of the service.” 102 Idaho at 180.

None of these considerations are present in this case to justify the disparity in treatment between the classes.

The current disparity between residential and commercial rates for Atlanta Power Company is also far outside the norms for the electric utility industry. For example, following are the residential and commercial summer energy charges contained in Idaho Power Company's tariffs as approved by the Commission:

Residential

First 300 kWh: 5.7783

All Additional kWh: 6.5148

Commercial

First 300 kWh: 7.0269

All Additional kWh: 7.9133

Greene Tree understands the logic of Staff's recommendation for a uniform percentage increase—in the absence of a cost of service study it is difficult to know what changes should be made. When, however, as here, it does not require a cost of service study to conclude the current structure is obviously discriminatory, a uniform percentage increase only perpetuates the evident unfairness.

Accordingly, the better choice is the rate design that equalizes the energy charge between residential and commercial customers at \$0.175/ kWh as shown on column (g) of Staff Attachment F. And, because Staff is recommending only a 5.09% overall increase, the equalization of energy charges can be accomplished without rate shock to the residential class. As shown on column (g) of Staff Attachment F, equalization of the charges would result only in a 10.84% increase to the revenue requirement to be recovered from residential class, as compared to the 60% increase proposed by the Company.

Greene Tree also understands the underlying dilemma that faces the Commission in this case. On the one hand there is the imperative to maintain a viable utility by approving an adequate revenue requirement; on the other hand, there is the imperative to avoid setting customer rates that would cause customers to drop off the system. In this regard, the Greene Tree resort facility owns diesel electric generators with adequate capacity to meet the needs of the facility, and, to date, these have been relied upon during the frequent periods of Atlanta Power Company source outages. Greene Tree's first preference is to remain a customer of Atlanta Power Company, recognizing that the availability of centrally supplied electric service contributes to the overall well-being and viability of the community of Atlanta. At some point, however, the economics of self-generation may outweigh the benefits of centrally supplied electric power.

As a final note, while "ability to pay" is not formally an acceptable criterion for ratemaking, it is sometimes thought that higher charges for commercial customers are acceptable because commercial customers may have the ability to recover some of their increased energy cost through sales of their goods and service. With respect to Greene Tree, however, this does not hold true. In the years Greene Tree has operated its resort/retreat in Atlanta, it has never done so at a profit. An increase to the Company's energy charge will only deepen its losses.

Conclusion

For the reasons cited herein, Greene Tree respectfully recommends that the Commission adopt a rate design that equalizes the energy charge for residential and commercial customers.

Dated this ____ day of October, 2008

Respectfully submitted,

MCDEVITT & MILLER LLP



Sean J. Miller

McDevitt & Miller LLP

Counsel for Greene Tree, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2008, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Israel Ray
Atlanta Power Co.
11140 Chicken Dinner Rd.
Caldwell, ID 83406

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Robert E. Smith
2209 N. Bryson Rd.
Boise, ID 83713

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Heather Houle, legal Asst.
By: MCDEVITT & MILLER LLP