

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) ORDER NO. 34334
)

On January 25, 2019, the Commission issued a Notice of Hearing & Order to Show Cause ordering Atlanta Power Company (“Atlanta Power” or “Company”) ¹ to appear before the Commission. Order No. 34209.

On February 19, 2019, the Show Cause Hearing was held as scheduled. No representative from Atlanta Power was in attendance.

On April 4, 2019, the Commission issued Final Order No. 34296 finding the Company to be in violation of numerous provisions of Idaho Public Utilities Law, *Idaho Code* §§ 61-101 *et seq.* The Commission determined the Company had violated *Idaho Code* §§ 61-401, 61-406, 61-602, 61-603, 61-610, 61-1001, and 61-1003. The Commission fined the Company \$12,103 under *Idaho Code* § 61-706 based in part on the information known at the time about the Company’s gross operating revenues.

On April 24, 2019, the Company filed a petition for reconsideration.

On April 29, 2019, representative for Atlanta Water Association, Inc. and Atlanta Landowner’s Association (the "Intervenors") filed a Statement of Position of Intervenor Steven J. Meade. On April 30, 2019, the original complainant in the case, Mary Drake, filed a cross-petition for reconsideration. On May 1, 2019, Commission Staff filed a cross-petition for reconsideration.

Now, the Commission conditionally grants the Company’s petition for reconsideration.

THE PETITION FOR RECONSIDERATION

The Company states it was unaware of the February 19, 2019 Show Cause Hearing and did not receive the Notice of Investigation or Notice of Hearing issued in this case because the

¹ We refer to Atlanta Power as a company throughout this Order, but we note that Atlanta Power Company, Inc. has been administratively dissolved by the Idaho Secretary of State at least six times since 2002. As of the date of this Order, the Company has been administratively dissolved since September 2011, with no agent listed. Additionally, the Company has repeatedly failed to fulfill administrative responsibilities with the Commission, including its continued failure to provide annual reports to the Commission for 2017 and 2018, raising serious questions whether the corporate formality should be respected or whether personal liability should attach to Israel Ray, the president of the Company, for any outstanding debts, fines, and liabilities incurred by the Company.

Commission served the Notices on the Company at an outdated address. The Company states it is attempting to sell the electric system to the community of Atlanta. The Company asserts that the fine imposed 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. The Company states it is attempting to come into compliance with Commission orders.

STATEMENT OF POSITION OF INTERVENOR STEVEN J. MEADE

Mr. Meade states that the board of the Atlanta Electrical Consumer Co-Op, Inc. ("Co-Op") has been contacted by the owner of Atlanta Power about purchasing the Company's assets. Mr. Meade requests the Commission suspend this matter for six months to allow the sides to negotiate a sale.

MARY DRAKE'S CROSS-PETITION FOR RECONSIDERATION

Ms. Drake urges the Commission to reject the Company's petition for reconsideration. Ms. Drake notes that Atlanta Power never responded to her original complaint, which opened this case, and has not fulfilled the requirements of prior Commission orders. Ms. Drake disputes Atlanta Power's claim that it did not receive notice of the Show Cause Hearing and expresses skepticism about Atlanta Power's intentions to sell its assets, and claims its statements are a stall tactic. Ms. Drake also states that customers do not have a phone number by which they can contact Atlanta Power with questions about their bill, to call when the power goes out, or for any other matter.

COMMISSION STAFF'S CROSS-PETITION FOR RECONSIDERATION

Commission Staff requests the Commission grant reconsideration. Staff notes that Atlanta Power has undertaken efforts to comply with Commission Order No. 34296, such as paying past-due statutory minimum assessments, updating the Company's address on file with the Commission, and filing annual verified returns showing gross receipts for 2016, 2017, and 2018. This, combined with Atlanta Power's assertion of willingness to sell the system, leads Staff to believe it would be appropriate to grant the petition for reconsideration. Staff states that granting reconsideration would give the Commission opportunity to determine the most appropriate use of the fined amount, and allow the parties to negotiate a sale of the Company.

DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter under Title 61 of the Idaho Code, including *Idaho Code* §§ 61-501, 61-508, 61-515, 61-520, 61-528, 61-533, and 61-612. Under

Idaho Code § 61-501, the Commission is “vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act.”

Any person interested in a final order or any issue decided in a final order may petition the Commission for reconsideration within 21 days of issuance of the final order. *Idaho Code* § 61-626(1), IDAPA 31.01.01.331.01. Within seven days of the filing of a petition for reconsideration, any person may cross-petition for reconsideration in response to any issues raised in the petition for reconsideration. *Idaho Code* § 61-626(1), IDAPA 31.01.01.331.02. When reconsideration is granted, the matter must be reheard or written filings submitted within 13 weeks of the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2). Unless otherwise directed by the Commission, a petition for reconsideration does not stay or excuse compliance with the underlying order. *Idaho Code* § 61-626(3). The Commission is empowered to specify how an order will be reconsidered and whether any cross-petitions for reconsideration will be granted. *Idaho Code* § 61-626(2).

In this case, the Company has petitioned us to reconsider Order No. 34296. Commission Staff, Complainant Mary Drake, and the Intervenors have filed cross-petitions.² We find that the petition and cross-petitions for reconsideration were timely.³ We also find it reasonable to grant the Company’s petition, and to reconsider Order No. 34296 as outlined below. In doing so, we are unpersuaded by the Company’s argument that it did not know about the Show Cause Hearing because the Commission sent notice of the hearing to an outdated address. It is Atlanta Power’s responsibility, as a regulated public utility, to ensure that the Commission has a current address on file. The Commission sent Summonses to the Company to respond to the complaint of Mary Drake via certified mail to the address on file with the Commission. Commission Staff also made numerous other efforts to contact the Company. Likewise, the Commission sent Notice of the Show Cause Hearing via certified mail pursuant to Commission Rules. Order No. 34296 at 1, Ex. 1. Relatedly, customers have also been unable to contact Atlanta Power on any consistent basis.

² The Intervenors entitled their filing as a “Statement of Position.” Although not denominated as such, we deem this Statement of Position to be a cross-petition for reconsideration because it substantially complies with Commission Rule 331.

³ We note the front page of Order No. 34296 states the Order was served April 2, 2019, while the signature page shows the Order as signed on April 4, 2019. Due to the discrepancy, the Commission acknowledges April 4, 2019 as the date on which the Order was issued and served.

The inability of the Commission, Staff, and customers to contact Atlanta Power is a significant concern to the Commission, and demonstrates the Company's disregard of its obligations to the Commission and its customers. We recognize the Company has provided updated contact information to the Commission, and hereby require the Company to provide its customers with current telephone numbers for both an onsite operator and Company management within seven days of the service date of this Order.

While the Company's lack-of-notice argument does not prompt us to reconsider our Order, we nevertheless believe it is appropriate to reconsider our findings based on the Company's and Intervenors' stated desire to facilitate a sale of the Company's system. We find the public interest may be served by such a sale. Immediately imposing the civil penalties called for in Order No. 34296 could impede sale negotiations. Order No. 34296 required the Company to pay \$12,000 in civil penalties by April 26, 2019, and an additional \$2,000 per day after that for each day in which payment is not received. Because we wish to encourage the Company's efforts to sell the system to a buyer who may better serve customers, we find it reasonable and in the public interest to at least temporarily suspend the Company's duty to pay these civil penalties.

In doing so, we are conditioning our suspension of the Company's duty to immediately pay the penalties on the Company acting in good faith to negotiate the sale of its system. In this regard, when the Company filed its petition for reconsideration on April 24, 2019, the Company still had two days to pay these penalties. Accordingly, if we later determine that there is good cause to revoke our conditional suspension of the Company's penalties, the Company will once again be liable for the \$12,000 in civil penalties. The Company also will be required to pay an additional \$2,000 per day for each day that the initial \$12,000 in penalties are not paid, with the additional amounts beginning to accrue two days after any order revoking conditional suspension.

We caution the Company that the Commission may revoke the suspension of the Company's payment obligation if we should later find the Company has not complied with the terms outlined in this Order. If 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.

Although we are conditionally suspending the Company's duty to immediately pay the \$12,000 assessed under Order No. 34296, we order Atlanta Power to pay the outstanding amount it owes the Commission for assessments from 2016, 2017, and 2018 within seven days of the service date of this Order. On April 24, 2019, the Company paid the statutory minimum required for annual utility assessments to the Commission, plus interest. We required the Company to pay the minimum annual amounts because the actual assessment amounts depend on the Company's gross operating revenues, and the Company had failed to report its gross operating revenues for 2016, 2017, and 2018. However, the Company filed its gross operating revenues on April 29, 2019. The documents show that the Company owed more than the minimum assessments it had paid for 2016, 2017, and 2018. The additional assessment amount the Company owes for those years totals \$280.32. This additional, statutorily required assessment amount is due within seven days of the service date of this Order.

Atlanta Power shall engage in a settlement conference with the parties in this case within 21 days of the service date of this Order. The purpose of this settlement conference will be to negotiate a sale of Atlanta Power's assets, including its electric system and its Certificate of Public Convenience and Necessity. No sale may close unless the Commission has approved the sale after a hearing under *Idaho Code* § 61-328. The Commission notes that the Atlanta Electrical Consumer Co-Op, Inc. ("Co-Op") referenced in the Intervenors' Statement of Position, is not yet a party to this case. If the Co-Op desires to negotiate a transfer of Atlanta Power's assets to the Co-Op within the parameters of this case, it must intervene in this case. Any other entity that desires to purchase the assets of the Company within the parameters of this case must likewise intervene in this case if it has not done so already. If Atlanta Power does not enter good faith negotiations to sell its assets, as it indicated it would in its petition for reconsideration, this conditional suspension of its penalty obligations may be revoked.

Staff must file a report with the Commission within 14 days of the settlement conference apprising the Commission of progress made during the settlement conference. Upon receiving Staff's report, or upon an earlier determination that the Company is not negotiating in good faith, the Commission will issue an Order outlining next steps in the reconsideration process, imposing fines, or taking any other action the Commission finds reasonable based on the record before it at that time.

Last, the Commission reminds the Company that the Commission maintains authority to bring Atlanta Power into compliance on not only the Company's administrative failures, but also its requirements to maintain adequate service that promotes the health and safety of the public. *Idaho Code* § 61-302. If a sale of the Company's assets cannot be promptly achieved, the Commission will continue to consider all options available to address the health and safety concerns raised by Atlanta Power's customers and the Commission's Staff.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration is granted as described above.

IT IS FURTHER ORDERED that the Company pay the remaining balance on its annual regulatory assessments as determined by its gross intrastate operating revenue for years 2016, 2017, and 2018, in the amount of \$280.32 within seven (7) days of the service date of this Order.

IT IS FURTHER ORDERED that the Company provide current telephone numbers for an onsite operator and Company management within seven (7) days of the service date of this Order.

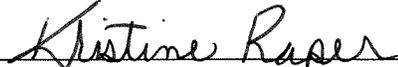
IT IS FURTHER ORDERED that the Company engage in good faith in a settlement conference within twenty-one (21) days of the service date of this Order.

IT IS FURTHER ORDERED that Staff provide the Commission a report within fourteen (14) days of the settlement conference apprising the Commission on progress.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th
day of May 2019.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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