

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIV-06-0865 MV/LFG
	)	
ARIZONA PUBLIC SERVICE	)	<b>CONSENT DECREE</b>
COMPANY,	)	
	)	
Defendant,	)	
	)	
THE ATLANTIC	)	
GROUP,	)	
	)	
Rule 19 Defendant	)	
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The United States Equal Employment Opportunity Commission (“Commission” or “EEOC”) filed this action against Defendant, Arizona Public Service Company (“APS”), to enforce Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq. (“the ADA”) and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The EEOC alleged that APS, as a third-party interferer and/or a joint employer discriminated against Jerry Billings when it terminated his employment at APS’ Four Corners Power Plant because Mr. Billings was perceived as disabled. APS specifically denies the allegations of the EEOC. The Commission also added The Atlantic Group (“Atlantic”) as a Rule 19 Defendant in this suit in order to obtain complete relief for Mr. Billings.

The Commission, APS, and Atlantic agree that this action should be resolved by entry of this Decree. The parties do not object to the Court's jurisdiction over this action and waive their right to a hearing and the entry of findings of fact and conclusions of law.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This Decree resolves all claims arising out of the issues between the Commission, APS and Atlantic that were or could have been raised in this lawsuit, including but not limited to claims for back pay, compensatory and punitive damages, injunctive relief, costs and attorneys fees.
2. The duration of this Decree shall be three (3) years from the date of entry of the Decree.

#### **INJUNCTIVE RELIEF**

3. APS, its officers, agents, employees, and successors, are enjoined for the duration of this Decree from: (a) discriminating against any employee on the basis of disability, including perceived disability; and (b) retaliating against any employee because he or she: (i) opposes discriminatory practices made unlawful by the ADA; (ii) files a charge of discrimination or assists or participates in the filing of such a charge; or (iii) assists or participates in an investigation or proceeding brought under the Federal laws prohibiting discrimination or retaliation.

#### **MONETARY RELIEF**

4. Within ten (10) days after entry of this Decree (i.e. the date it is filed by the

Court), Atlantic will pay the sum of \$125,000 to Jerry Billings in settlement of his claims.

The settlement amount will be paid in two sums:

A. the amount of \$20,000 representing back pay. Atlantic shall pay the back pay amount less only any applicable deductions for the employee's portion of FICA and applicable federal and state tax withholding; and

B. the amount of \$105,000 representing compensation for compensatory personal injury damages. Atlantic shall pay this amount and issue a United States Internal Revenue Service Form 1099 to Mr. Billings for the amount designated as compensatory damages.

5. Each payment required by Paragraph 4 above, shall be made via check payable to Jerry Billings and sent directly to Mr. Billings at the address to be provided Atlantic by EEOC.

6. Within five (5) days of issuing the checks to Mr. Billings, Atlantic shall mail a copy of each check to Mary Jo O'Neill, Regional Attorney, EEOC, at 505 Marquette, N.W., Suite 900, Albuquerque, New Mexico, 87102.

#### **REEMPLOYMENT**

7. On February 19, 2007, Jerry Billings was returned to work at APS' Four Corners' Power Plant in a Planner/Scheduler position through a job assignment with Atlantic. Defendants agree that Mr. Billings will continue to be employed at the Four Corners Power Plant as long as APS reasonably determines that suitable work is

available; Mr. Billings is qualified to perform the available work; and Mr. Billings is satisfactorily performing work assigned to him. Defendants further agree that all employment decisions affecting Mr. Billings shall be made without discrimination based on disability, including perceived disability and without retaliation for his having filed a charge and having participated in this suit.

#### **EXPUNGING OF PERSONNEL FILES**

8. Within 20 days of the effective date of this Decree, APS and Atlantic shall expunge from the personnel file(s), if any, of Jerry Billings of all documents, if any, containing any reference to the charge(s) of discrimination filed by Mr. Billings against APS and/or Atlantic.

#### **CORRECTIVE POLICIES AND PRACTICES**

9. APS shall institute and carry out the policies and practices set forth below to help ensure that its work environment is free of disability discrimination.

10. **Notice.** APS shall post for the duration of this Decree, in a prominent place frequented by its employees in New Mexico, the Notice attached as Attachment A, in the same type, style, and size. A copy of APS's Policies and Procedures discussed below will be electronically posted.

11. **Training.** APS shall train all APS employees working in New Mexico on disability discrimination and retaliation, in accordance with the following:

A. There shall be two management trainings, the first of which shall

occur within 180 days of the date this Decree is entered and the second of which shall occur at any time during the final year of this Decree; new management hired in the second year of the Decree who have not attended either training will receive similar training. The trainer shall conduct live training sessions of two hours, including adequate time for questions and answers, for all managers. Non-managerial employees currently receive annual, computer-based training on company policies including non-discrimination policies and such training will continue for the duration of the Decree. All employees shall register when they complete such training, and APS shall retain the registry for the duration of this Decree.

B. APS shall request the EEOC's approval of the trainer by submitting, at least 60 days prior to each live training, the name(s), address(es), telephone number(s), and resume(s) of the proposed trainer, the training dates, and an outline of the training contents, to the Commission's Regional Attorney at the address listed above, which approval shall not be unreasonably withheld. In the event the Commission does not act on the request for approval of the trainer within 30 days of the request, the request shall be deemed approved. If the EEOC does not approve the APS trainer, APS shall submit a new trainer for approval within 30 days of receipt of the disapproval. If no new trainer is proposed or if the new trainer is not acceptable, the EEOC shall designate a trainer at a cost not to exceed \$1,500 per live session, to be paid by APS. A Commission representative may, with reasonable notice, attend and fully participate in the training.

C. The managerial training shall explain: (1) what constitutes disability discrimination, including discrimination based on perceived disability and failure to provide a reasonable accommodation; (2) that the ADA prohibits all forms of disability discrimination, including perceived disability discrimination; (3) how to prevent disability discrimination in the workplace; and (4) to whom employees may complain if they feel they have been subjected to this disability discrimination. The trainer also shall review and explain APS's policies regarding disability discrimination and retaliation.

D. During the management training, the Plant Manager in the New Mexico facility shall speak about the importance of preventing disability discrimination, and the legal consequences faced by companies that tolerate such misconduct. The Plant Manager shall explain that managers will be evaluated on their enforcement of company discrimination policies.

E. An APS supervisor identified by the parties will receive coaching concerning the management of employees with respect to issues regarding disabilities and perceived disabilities.

F. Atlantic employees in New Mexico at the APS facility will be provided with a copy of the Notice provided for in Paragraph 10. The Notice shall be provided in a paycheck distribution within 90 days of the entry of this Decree. New employees hired after the date of paycheck distribution will receive a copy of the Notice in their new hire packet. Atlantic's Customer Service Representative who provides services at the APS facility in New

Mexico will be given training comparable to that offered by APS as specified in Paragraph 11 A & C.

12. **Written Policies.** Within 60 days of the date of entry of this Decree, APS shall review its existing written policies concerning disability discrimination to confirm that they conform to the law, and shall submit the policies for review to the Commission's Regional Attorney at the address listed above. The written policies must include at a minimum:

A. a description of perceived disability discrimination, and a statement that such misconduct, including unlawful discharge based on perceived disability, by anyone, is illegal and will not be tolerated;

B. the obligation to engage, with both applicants and employees with disabilities, in the interactive process required by the ADA to determine whether a reasonable accommodation is available;

C. the obligation to provide, to both ADA qualified applicants and ADA qualified employees with disabilities, a reasonable accommodation that complies with the ADA;

D. a statement encouraging employees to report to a manager if they believe they have been discriminated against, along with the name(s) and contact information of managers to whom employees can make such a report;

E. assurances that APS will investigate these reports promptly and

fairly, and will take appropriate corrective action to make victims whole and to eradicate the disability discrimination; along with a description of the consequences that will be imposed upon violators of the policies;

F. a promise of maximum feasible confidentiality for persons who believe that they have been discriminated against; and

G. an assurance of non-retaliation for persons who believe they have been discriminated against, and for witnesses.

Revisions to policies shall be electronically communicated to each current employee within 90 days of the date of this Decree and to each new employee when hired.

13. **Procedures.** APS's procedures to address complaints of disability discrimination shall be revised, if needed, to include the following:

A. APS shall designate two managers to receive complaints of discrimination from employees, and to initiate investigation.

B. APS shall promptly and appropriately investigate all employee complaints of disability discrimination or retaliation by interviewing all potential victims and witnesses, taking notes, and making a finding about whether the misconduct occurred. APS shall take immediate appropriate corrective action to make disability discrimination and retaliation victims whole, and to discipline those who engaged in the misconduct.

C. A procedure to evaluate managers on their performance in responding to employee complaints of discrimination, including disability discrimination, or retaliation. A manager's failure to enforce the discrimination policy shall result in discipline.

Revisions to procedures shall be electronically communicated to each current employee within 90 days of the date of this Decree and to each new employee when hired.

#### **REPORTING BY APS AND ACCESS BY EEOC**

14. APS shall submit the following in writing and in affidavit form to the Commission's Regional Attorney at the address provided above, beginning six months from the date of this Decree, and thereafter every 12 months for the duration of the Decree:

A. A copy of both the policies and procedures required above. (See §§ 12-13 above);

B. The name, address, position, social security number, and telephone number of every APS employee or contract employee in New Mexico who complained about disability discrimination, including perceived disability discrimination and failure to provide a reasonable accommodation, or retaliation during the period preceding the report to the EEOC. The first report shall cover the first six months from the date of the Decree. The nature of the complaint, APS' investigatory efforts, and corrective action

taken, if any, also shall be specified;

C. The registry of New Mexico persons completing the training required in Paragraph 11, above, and a list of current personnel employed by APS in New Mexico on the days of the trainings. All employees shall be identified by employee number and management employees shall be so identified.

D. Confirmation that (i) the Notice required above was posted, and the locations where it was posted; (ii) revisions to the policies and procedures required above were electronically communicated to each current and each new APS employee in New Mexico; and (iii) the expungement from Mr. Billings' personnel file, if any as required above took place. Confirmation of item (iii) shall include the date of expungement and a list of the documents expunged if any.

15. The Commission, upon reasonable notice and agreement, shall have the right to enter and inspect APS's premises to ensure compliance with this Decree.

#### **COSTS AND DURATION**

16. Each party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this Decree.

17. Absent extension, this Decree shall expire by its own terms at the end of the thirty-six (36) month after its entry without further action by the Parties.

### **PENALTIES FOR NON-COMPLIANCE**

18. This Court shall retain jurisdiction over this action for the duration of the Decree. During this time, the EEOC may petition this Court to order Atlantic or APS to comply with the Decree. Should the Court determine that Atlantic or APS has not complied, the Court may order appropriate relief including extension of the Decree for the time necessary to remedy non-compliance, award of attorney's fees and costs, and fines for contempt of court.

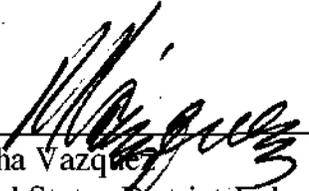
19. If Atlantic fails to comply with any monetary provision of this Decree, it shall have ten days from receipt of notice of non-compliance to cure its non-compliance. If APS fails to comply with any other provision of this Decree, it shall have thirty days from receipt of notice of non-compliance to cure its non-compliance. Thereafter, a penalty shall accrue for any non-compliance at the amount of \$50 per day, until Atlantic or APS is in compliance with the Decree again.

20. In the event that Atlantic or APS does not comply with any provision of this Decree, and the Commission petitions the Court to order Atlantic or APS to comply, Atlantic or APS shall pay all attorney's fees and costs incurred by the Commission to enforce the Decree.

**AGREEMENT TO ENTRY OF DECREE**

21. The EEOC, Jerry Billings, and Defendants agree to entry of this Decree and judgment subject to final approval by the Court.

DATED this 11th day of June, 2007.

  
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Martha Vazquez  
United States District Judge

APPROVED AND CONSENTED:

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Deputy General Counsel

Gwendolyn Young Reams  
Associate General Counsel

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Attorneys for Defendants

## NOTICE TO ALL EMPLOYEES OF ARIZONA PUBLIC SERVICE COMPANY

This Notice is posted pursuant to a Consent Decree entered into between Arizona Public Service Company (APS) and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under federal law, the Americans with Disabilities Act (ADA) and state law to discriminate against an employee on the basis of disability, including in the firing, recruitment, compensation, assignment, or other terms, and conditions or privileges of employment. It is also unlawful for an employer to refuse to reasonably accommodate employees or applicants with disabilities. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

APS agrees to abide by the ADA, and further agrees that it shall not retaliate against any employee who exercises his or her rights under the ADA.

If you believe your rights under the ADA have been violated, you have the right to seek assistance from:

1. Equal Employment Opportunity Commission (EEOC), 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or

2. Equal Employment Opportunity Commission (EEOC), 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102, (505) 248-5202.

or

3. The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838 or 1 (800) 566-9471.

You have the right to file a charge with the EEOC or NMHRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of APS for (1) opposing discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the New Mexico Department of Labor, Human Rights Division at the addresses or telephone numbers listed above.

EXHIBIT A