

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

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EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

v. )

ARIZONA PUBLIC SERVICE )  
COMPANY, )

Defendant, )

THE ATLANTIC )  
GROUP, )

Rule 19 Defendant. )  
\_\_\_\_\_ )

CIV - 06 - 0865 MV LFG

COMPLAINT

JURY TRIAL DEMAND

**NATURE OF THE ACTION**

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct alleged unlawful employment practices on the basis of disability and to provide appropriate relief to Jerry Billings who was adversely affected by such practices. The Commission alleges that Defendant Arizona Public Service Company as a third-party interferer and/or a joint employer discriminated against Jerry Billings when it terminated his employment at its Four Corners Power Plant because Mr. Billings was perceived as disabled.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Right Act of 1964 ("Title VII"), 42

U.S.C. §2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981A.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

### **PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference, Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Arizona Public Service Company ("Defendant APS"), was an Arizona corporation that has continuously been doing business in the State of New Mexico and in at least the City of Fruitland, and has continuously had at least 15 employees.

5. At all relevant times, Defendant APS has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. §12111(5), and Section 101(7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§2000e(g) and (h).

6. At all relevant times, Defendant APS has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

7. At all relevant times, Defendant Atlantic has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C.

§12111(5), and Section 101(7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§2000c(g) and (h).

8. At all relevant times, Defendant, The Atlantic Group ("Defendant Atlantic"), has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

9. At all relevant times, Defendant Atlantic was a party to a contractual agreement with Defendant APS to provide individuals to work at APS' facilities. Defendant Atlantic paid Jerry Billings wages while he was employed at APS. Defendant Atlantic is therefore named as a party pursuant to Rule 19(a) of the Federal Rules of Civil Procedure in that, in its absence, complete relief cannot be accorded among those already parties, and it has an interest in the subject of this action.

### **STATEMENT OF CLAIMS**

10. More than thirty days prior to the institution of this lawsuit, Jerry Billings filed a charge with the Commission alleging violations of Title I of the ADA by Defendant APS. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since at least April 2004, Defendant APS as a third-party interferer and/or a joint employer has engaged in unlawful employment practices at its Fruitland, New Mexico facility, in violation of Section 102(a) of the ADA, 42 U.S.C. §12112(a). These unlawful employment practices include the termination of Jerry Billings employment at APS' Four Corners Power Plant because APS perceived he was disabled and/or interfered with Jerry Billings' employment opportunities with Atlantic Group by terminating Jerry Billings' employment because APS perceived he was disabled.

12. The effect of the practices complained of in paragraph 11 above has been to deprive Jerry Billings of equal employment opportunities and otherwise adversely affect his status as an employee because of his perceived disability.

13. The unlawful employment practices complained of in paragraph 11 above were intentional.

14. The unlawful employment practices complained of in paragraph 11 above were done with malice or with reckless indifference to the federally protected rights of Jerry Billings.

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant APS, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating against and terminating qualified individuals with disabilities because of their disabilities or perceived disabilities or any other employment practice which discriminates on the basis of disability:

B. Order Defendant APS to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant APS and Defendant Atlantic Group to make whole Jerry Billings by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices, including but not limited to reinstatement of Jerry Billings and/or front pay as appropriate.

D. Order Defendant APS to make whole Jerry Billings by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described

in paragraph 11 above, including job search expenses and other pecuniary losses, in amounts to be determined at trial.

E. Order Defendant APS to make whole Jerry Billings by providing compensation for past and future non pecuniary losses resulting from the unlawful practices complained of in paragraph 11 above, including emotional pain, suffering, anxiety, humiliation, loss of enjoyment of life and inconvenience, in amounts to be determined at trial.

F. Order Defendant APS to pay Jerry Billings punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

#### **JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its Complaint.

DATED this 14<sup>th</sup> day of September 2006.

Respectfully submitted,

RONALD S. COOPER  
General Counsel

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 L Street, NW  
Washington, D.C. 20507



MARY JO O'NEILL

Regional Attorney



SALLY C. SHANLEY

Supervisory Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

3300 N. Central Ave.

Suite 690

Phoenix, Arizona 85012



LORETTA MEDINA

Senior Trial Attorney

VERONICA A. MOLINA

Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Albuquerque Area Office

505 Marquette N.W., Suite 900

Albuquerque, New Mexico 87102

Telephone: (505) 248-5230

Attorneys for Plaintiff