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July 13, 2015

To: Kelvin Miller, Interim Director of Customer Care

Mayor Jannquell Peters
CM Myron B. Cook
CM Alexander Gothard
CM Deana Holiday Ingraham
CM LaTonya Martin
CM Karen Rene'
CM Lance Rhodes
CM Nanette Saucicer
CM Sharon Denise Shropshire

Brad Bowman, City Attorney
Fred Gardiner, City Manager

RE: Power Cost Adjustment (PCA)

Dear Mr. Miller, Mayor and Council Members, City Attorney and City Manager:

I am assuming that the Response by Mr. Miller was approved by the City Attorney and the City Manager and is deemed to be the City's Response from Management in representing the City concerning the letter of dispute filed by my husband, Melvin Pittman. I received a letter on July 10, 2015, dated July 5, 2015, from Mr. Kelvin Miller in reference to an informal meeting that I attended on June 9, 2015, in a conference room in the Customer Care building. At the beginning of the meeting, I stated that this meeting could not be considered a hearing since it was taking place eleven months after the filing of my dispute. I also stated that the City had defaulted on resolving the dispute as outlined in the City's Dispute Resolution Policy. I asked whether or not the meeting would be taped and the answer was no. Interim City Attorney Brad Bowman (later hired in June as the City Attorney) was present at the meeting.

From this point forward my response is to the Mayor and Council, City Attorney and City Manager. Each of you in your Oath of Office pledged to **“to support the Constitution of the United States and this state and observe the provisions of the charter and code of ordinances of the City of East Point”**. Each of you failed to do this when you refused to uphold a vote of Council made on January 7, 2013. Page 3 of the January 7, 2013, Minutes

contains the following: **“Council Member Cook motion to approve proposal #2 to adopt a Power Cost Adjustment of 0.0102 kwh and ECCR of 0.0062 kwh and EMR discount at .0111 effective until June 2013 with Council Member Reed providing the second. The motion carried with Council Members Rhodes and Hubbard voting “no”.”**

The City’s Response states: **“The ordinance, however, does not contain any time limitation related the PCA or the PCA rider.”** Mayor and Council knew that setting specific time limitations in the Ordinance would defeat the purpose for creating a power cost adjustment. We were not fools, hence the Council is free to impose a realistic time frame if needed and that is what CM Cook did in his motion on January 7, 2013. Knowing that the Electric, Water and Sewer Utilities Revenues are very dependent on the weather and to adjust for any sharp increases or decreases in the collection of Revenues, Council included the Quarterly Report to insure that these Utilities would have sufficient Revenues to operate and provide full services to their customers. The power cost adjustment could be used for a one time purchase of some major equipment; an unforeseen restoration or renovation of a facility; a sudden increase in the City’s intergovernmental contract with Atlanta or Fulton County; or an increase in landfill costs for the Sanitation Utility. However, the power cost adjustment was never meant to be a permanent rate for an unknown source- namely the General Fund. It is a cost associated directly with a Utility.

The **Charter clearly** states that **only** the Mayor and Council can **set** rates and fees by Council vote. That means that **only** the Council can vote to **approve** a Power Cost Adjustment Rider which **sets** the rate for the power cost adjustment. Furthermore, the Ordinance states that; **“Application of this rider is at the sole discretion of the City of East Point”**. Unless the Charter has been changed the **“City of East Point”** refers to the City Council and **not** the City Manager.

Mr. Miller’s Response also states that: **“The City understands there has been some discussion in the community asserting that the PCA was originally intended to be charged for a limited period of time and that this period expired at the close of 2013.”** Repeated discussions at Council Meetings and Work Sessions by some Council Members requesting the City Manager to provide the power cost adjustment information that the Ordinance **requires** in Quarterly Reports to Mayor and Council are outlined below in Council Minutes that can be found on the City’s website:

- 1) **August 4, 2014: Pages 7-8**
- 2) **August 18, 2014: Page 2**
- 3) **October 6, 2014: Pages 2-3** At this Council Meeting, the Council voted unanimously for a motion by CM Sharon Shropshire **“to direct the City Manager to bring back information with regard to what has been collected from January 1, 2014 to June 30, 2014, provide justification as to why it is needed at its current rate, and whether or not the PCA can be reduced to zero (0) or reduced at all.** (No City Manager including the one that was hired in December 2014 has made the required Quarterly Report that would have addressed this motion.)
- 4) **November 17, 2014: Page 13**
- 5) **December 1, 2014: Page 13**

In early April, I met with Mayor Peters, City Manager Gardiner and the Finance Director to provide historical information and to discuss the current power cost adjustment, the Dispute Resolution and the Ordinance. At the meeting, I suggested that:

- (1) The City's Management send letters to the residents who filed letters of dispute stating that since the City's Management had defaulted on implementing the City's Dispute Resolution Policy that all power cost adjustment fees be terminated based on the date of the letter and credits be made for fees paid after that and remove unpaid fees from the bills of the other residents.
- (2) The City Manager follow the Ordinance in making Quarterly Reports to the Council and justify the recommendation for a power cost adjustment and a power cost adjustment rider rate.
- (3) Since the City is allowed to make a profit on its Utilities, the profit could be set at a rate by the Council in the Budget for a transfer to the General Fund. I also suggested that the Council specify how the money would be allocated in the General Fund.

Since the Mayor and Council violated the Charter in **adopting** the 2016 Budget (**See Sec.2-207.- Form of legislation. (g)**) and the fact that the 2016 Budget does not include any power cost adjustment rider rate, the City continues to violate the Charter and the Ordinance by billing and collecting a power cost adjustment rider rate.

In closing, I want to make three statements perfectly clear:

- 1) It is **not** up to the City Manager to decide when Mayor and Council is given a Quarterly Report on any PCA rate that the City is charging. By City Ordinance, he is **required** to do so in a Council Meeting so that Mayor and Council can vote to either accept, amend, or reject his **recommendation. The Council sets fees and rates not the City Manager.**
- 2) I am not paying the power cost adjustment fees that have appeared on my bill since August 2014. I will not pay any future power cost adjustment fees that appear on my bill unless Mayor and Council vote to approve a power cost adjustment rider in compliance with the criteria and information stated in the Ordinance.
- 3) If the City's Management choose to disconnect my electric services because of my refusal to pay an illegal fee after defaulting on the City's Dispute Resolution Policy, then I will be forced to take immediate legal actions against the City requesting that the City pay in addition to the reimbursement of all legal court costs but also the following:
 - a) The total cost of housing three adults in a two bedroom hotel suite capable of providing services for three meals a day.
 - b) The total cost of boarding my two dogs and the cost of gas for daily visits.
 - c) The total cost of all of my food due to spoilage and someone to clean up.
 - d) Any damage that occurs to my property because of a lack of electricity.
 - e) Any extra cost for gas for doctor visits and to my hairdresser bi-monthly.
 - f) Punitive damages for the loss of pleasure and the comfort of my home and my pets.

Page 4

It is past time for Mayor and Council to resolve the power cost adjustment issue and if the City Manager will not provide the information in compliance with the Ordinance and the directives from Council, then they need to hire one that will follow their directives- which is a vote of five Council Members. The Mayor, Council Members, City Attorney and the City Manager need to honor their Oaths of Office and protect the rights of the City, residents and businesses.

Sincerely yours,

Earnestine O. Pittman