

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)
THIRTEENTH JUDICIAL CIRCUIT)

COUNTY OF GREENVILLE)

Jessica S. Cook, Corrin F. Bowers & Son, Cyril)
B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna)
Jenkins, Chris Kolbe, and Ruth Ann Keffer, on)
behalf of themselves and all others similarly)
situated,)

CASE NO. 2019-CP-23-06675

Plaintiffs,)

NOTICE OF FILING)
EXPERT OPINION OF)
INDEPENDENT COUNSEL)
REGARDING)
S.C. PUBLIC SERVICE)
AUTHORITY'S)
COMPLIANCE WITH THE)
COOK SETTLEMENT

v.)

South Carolina Public Service Authority, an)
Agency of the State of South Carolina (also)
known as Santee Cooper); W. Leighton Lord, III,)
in his capacity as chairman and director of the)
South Carolina Public Service Authority;)
William A. Finn, in his capacity as director of the)
South Carolina Public Service Authority; Barry)
Wynn, in his capacity as director of the South)
Carolina Public Service Authority; Kristofer)
Clark, in his capacity as director of the South)
Carolina Public Service Authority; Merrell W.)
Floyd, in his capacity as director of the South)
Carolina Public Service Authority; J. Calhoun)
Land, IV, in his capacity as director of the South)
Carolina Public Service Authority; Stephen H.)
Mudge, in his capacity as director of the South)
Carolina Public Service Authority; Peggy H.)
Pinnell, in her capacity as director of the South)
Carolina Public Service Authority; Dan J. Ray, in)
his capacity as director of the South Carolina)
Public Service Authority; David F. Singleton, in)
his capacity as director of the South Carolina)
Public Service Authority; Jack F. Wolfe, Jr., in)
his capacity as director of the South Carolina)
Public Service Authority; Central Electric Power)
Cooperative, Inc.; Palmetto Electric Cooperative,)
Inc.; South Carolina Electric & Gas Company;)
SCANA Corporation, SCANA Services, Inc.,)

Defendants.)

_____)

Defendant South Carolina Public Service Authority (also known as Santee Cooper) gives notice of filing of Expert Opinion of Independent Counsel (April 22, 2022), regarding compliance with the *Cook* settlement.

We have been asked by the South Carolina Public Service Authority (Santee Cooper) to provide an independent hearing in the above-referenced case.

We are competent, due to our qualifications and professional experience, to provide opinions on these questions. We collaborated on this report to list the widest array of our experiences, as described below. We give this legal opinion so that it may be filed with the Court of Common Pleas in this class action suit. We are aware of the provisions of criminal law regarding perjury, and our expert opinion, assigned below, will be regarded the same as testimony under oath, subject to the penalty of perjury.

Our opinions are based on the materials identified below and on our research and analysis of the information that has been provided and have independently obtained. Our opinions are subject to amendment or supplementation as warranted.

We understand that Santee Cooper has an annual obligation to provide a compliance report to the Court and will update our opinions accordingly as the implementation of the Settlement Agreement progresses.

Our Background and Qualifications

Wallace B. Jefferson

I am a named partner of the law firm Alexander Dubos & Jefferson LLP in Austin, Texas, USA. Before joining the firm, I was the 26th Chief Justice of the Supreme Court of Texas, the highest civil court in the State of Texas. The Governor of Texas at that time, Rick Perry, appointed me to the Supreme Court in 2001 and named me Chief Justice in 2004. I served in that capacity until my retirement from the Court in October 2018 and was elected to both positions by the people of Texas.

During my time on the Court, I served as president of the Conference of Chief Justices, an association of chief justices from the 50 states comprising the United States of America and the U.S. territories. While serving in that role, I gave a presentation to the Network of the Presidents of the Supreme Judicial Courts of the European Union, held at the European University Institute in Florence, Italy about applying the rule of law among independent sovereign states. At the invitation of Chief Justice John Roberts of the Supreme Court of the United States, I also served on the federal Judicial Conference Standing Committee on Rules of Practice and Procedure. I also served on the RQ WKH % RDUG RI \$GYLVRUV RI WKH -XVWLFH 6.DQGUD. I am the Treasurer and an elected member of the American Law Institute, an organization devoted to producing scholarly work to clarify, modernize, and improve the law. I am an elected member of the Philosophical Society of Texas and the American Academy of Appellate Lawyers. My CV is attached as Exhibit 1.

I graduated from the James Madison College at Michigan State University in 1985 and from the University of Texas School of Law in 1988. I have been a member of the State Bar of Texas since 1988 and have been certified in appellate law by the Texas Board of Legal Specialization since 1993.

Before becoming a judge, I practiced law at the San Antonio, Texas, USA, law firm of

Farmers No. GV-202501 in the 261st District Court of Travis County, Texas. Texas sued Farmers Group, Inc. and a number of corporate and individual insurers on behalf of a class of millions of Texas policyholders, claiming that the insurers charged excessive rates for homeowner policies between 1999 and 2003, had improperly used credit records and risk assessments in determining premiums, and failed to provide adequate notices under the Fair Credit Reporting Act to both homeowners and automobile policyholders. The case was settled with three classes and a complex combination of remedies. After an unsuccessful seven-year appeal by certain objectors, the parties had to renegotiate certain terms of the settlement agreement and the trial court approved the amended settlement agreement that I helped negotiate and drafted. Full implementation of the Farmers settlement took several years, which I oversaw as outside counsel. In addition, I have been the lead counsel in negotiating, drafting, and implementing a variety of class action and mass tort settlements.

I am the National Editor of *KH \$ P H U L F D Q % D U \$ V o l u m e F o o d , W L R Q ¶ V PRACTITIONER \$ GUIDE TO CLASS ACTIONS* (1st ed. 2010; 2d ed 2017, 3d ed 2021). I have handled and consulted on a wide variety of class actions, including pharmaceutical products, insurance, environmental, consumer, food and alcohol labeling, securities, and employment matters. My current CV is attached as Exhibit 2.

Our Work in this Matter

We were retained as expert witnesses under Sections IV.A and IV.B of the Settlement Agreement. In connection with our work, we performed the following:

- (a) We reviewed the Settlement Agreement, the Amended Order and Judgment, the live Settlement Agreement, and the live Settlement Agreement.
- (b) We prepared and submitted an expert report for FYE 2020 that analyzed the initial implementation of the Settlement Agreement and other business activities of Santee Cooper during FYE 2020 relative to the Settlement Agreement;
- (c) We met and communicated with the client and the court over the course of the year following our first report to discuss the continuation of the settlement implementation process during FYE 2021.
- (d) We reviewed over 6,300 pages of documents received from Santee Cooper relating to FYE 2021, including annual reports, board packages and presentations, spreadsheets, emails and other correspondence, and 90 materials, reports to and from the Office of Regulatory Staff (ORS) of South Carolina, customer bills, websites, and other materials relating to the implementation of the Settlement Agreement;

¹ E.g.

x a common benefit fund (Common Benefit Fund) for pro rata payments to the class members (§V.A); and

x

described above in this Section, Santee Cooper will not include such excess at any point in time in its cost of service formula to be passed on to its customers through increased rates or charges

Settlement Agreement § IV.B.

C. 6 D Q W H H & R R S H U ¶ V 2 W K H U 6 H W W O H P H Q W 2 E O L J D W L

The Settlement Agreement further requires that Santee Cooper provide an annual report, beginning April 30, 2021, through April 30, 2030, to the C b W D Q G & H Q W U D O ³ H V W D E & R R S H U ¶ V F R P S O L D Q F H Z L W K W \$ K \$ W Q G P, 0 2 % Q ' G 6 U M W W O U L F H Q L V § IV.C.

Santee Cooper proposed an Outline of Proposed Topics for Annual Compliance Reports (Outline), that the parties agreed to follow in preparing the annual reports. See 2021 Compliance Report Exhibit B.

In fulfillment of its obligation under § V.C of the Settlement Agreement and following the Outline, Santee Cooper has provided its 2021 Compliance Report accompanied by voluminous exhibits, all of which we have reviewed. Based on those materials and the other materials we have researched and reviewed as described above, we are providing this expert opinion.

Question Presented

Did Santee Cooper ³ H V W D E O L V K > @ with the terms and conditions of §§ IV.A and IV.B of the Settlement Agreement during 2021?

Yes.

Common Benefit Fund Payment Under

Exceptions. For 2021, Santee Cooper has identified the following exceptions to the Rate Freeze from the time period reflected in its 2021 Compliance Report

- x Five changes in law:
 - o COVID-19 legislation, orders, and other actions related to the pandemic
 - o Act 90 of the South Carolina General Assembly;
 - o A Rule Change in the steam electric power generating Effluent Limit Guidelines (ELG) by the U.S. Environmental Protection Agency (EPA)
 - o The U.S. Armed Services Board of Contract Appeals (ASBCA) order regarding St. Stephen Rediversion Project and statement of position from the Army Corp of Engineers (ACE);
 - o A U.S. Mine Health and Safety Administration (MHSA) order closing the Sugar Camp Mine Complex coal supplier.
- x The August 2021 Fire at the Sugar Camp Mine Complex operated by Foresight Coal Supply LLC
- x The November 2021 Fire at the V.C. Summer Unit;
- x Tropical Storm Elsa which passed through South Carolina on July 8, 2021 and
- x Tropical Storm Elsa which passed through South Carolina on July 8, 2021 and

2021 Compliance Report at 10-11. Each exception is addressed below.

COVID-19 Changes in Law As to the first change in-law exception, Santee Cooper has documented out-of-pocket costs and expenses of approximately \$3.5 million associated with COVID-19 legal developments. See 2021 Compliance Report at 12 & Exhibit N. These costs and expenses are not expected to be eligible for FEMA reimbursement as Santee Cooper has received notice from FEMA that its 2020 COVID-related costs are not reimbursable at 12 & Exhibit D.

Act 90 Change in Law The second exception relates to Act 90 of the South Carolina General Assembly. Act 90 provides for additional regulatory oversight of Santee Cooper by the Joint Bond Review Committee (JBRC), the South Carolina Public Service Commission (PSC), and the ORS. Santee Cooper has described the additional oversight and reporting requirements associated with Act 90 and has documented the following additional costs

- x hiring a staff person to support JBRC compliance;

- x hiring additional personnel including a consultant and expending other resources in connection with a more extensive process associated with the Integrated Resource Plan that must now be submitted to the PSC in 2023 (and every three years afterward) and
- x creating a staff position to evaluate and respond to additional document and information requests from ORS.

2021 Compliance Report at 12. These additional costs and expenses attributable to Act 90 compliance amount to \$9,276.51 for FYE 2021. See id. at 13 & Exhibit P.

Changes in EPA ELGs. EPA has published new steam electric power ELGs. Originally published in 2015, these rule changes were deferred because of a decision to postpone compliance dates and a reconsideration in 2020. The final rule was promulgated on October 13, 2020, and Santee Cooper began work in 2021 to comply with the rule change by implementing a pilot study at the Cross generating station. Santee Cooper engaged contractors for this study and incurred a cost of \$4,235,976. See 2021 Compliance Report at 18-14 & Exhibit Q.

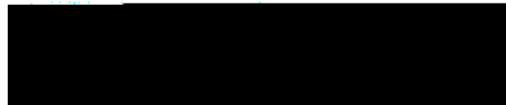
Change in law. St. Stephen Rediversion Project. In July 2020, the ASBCA issued an order UHJDUGLQJ 6DQWHH & RRSHTUV DJUHHPHQW ZLWK \$, & 2 (UHO requiring Santee Cooper and ACOE to negotiate new rates for power from the St. Stephen

Debt Issuance Update Santee Cooper issued additional debt in 2021 to refund outstanding debt (Series 2021A) and borrow new money (Series 2021B), 2021 Compliance Report at 25, and it is our understanding that WKHUH LV QR FODLP WKDW WKLV LV X D obligations under the Settlement Agreement.

In sum, Santee Cooper has complied with its reporting and current obligations under the Settlement Agreement.

Respectfully submitted,

Marcy Hogan Greer
ALEXANDER DUBOSE & JEFFERSON LLP
515 Congress Ave., Ste. 2350
Austin, Texas 78701-3562



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April 22, 2021

ELECTRONICALLY FILED BY APR 29 9:44 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2306675

EXHIBIT 1

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Austin, Texas 78701
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SUMMARY:

- x J.D., Hofstra Law School 2009
- x J.D., Pepperdine University School of Law, 2006

PROFESSIONAL BACKGROUND:

- x Chief Justice, Supreme Court of Texas, 2004-2013
- x Associate Justice, Supreme Court of Texas, 2001-2004
- x Partner, Crofts, Callaway and Jefferson, 1991-2001
- x Associate, Groce, Locke and Hebdon, 1988-1991

BOARD CERTIFICATION:

- x Board certified in civil appellate law by the Texas Board of Legal Specialization, 1998 to Present

PROFESSIONAL HONORS AND AWARDS:

- x Distinguished Lawyer Award, Austin Bar Association, 2020
- x Presidential Citation Award, University of Texas, 2016
- x Lifetime Achievement Award, Texas Lawyer, 2015
- x Jurisprudence Award, Anti-Defamation League Austin, 2015
- x Inaugural Wallace B. Jefferson 1.174 0 Td [(L)2 (,1b(nt)6.3 (i)-2.6 (e(e B)x002 9a BMC 72(A)4.4 0 Td]

PROFESSIONAL ACTIVITIES

- x Lexitas, Board of Directors, 2020-Present
- x American Law Institute, Member, 2001-Present
 - o Treasurer, 2014-Present
 - o Executive Committee, 2014-Present
 - o Executive Compensation Committee, 2014-Present
 - o Membership Committee, 2013-Present
 - o Restatement Third, Law of Consumer Contracts, Adviser, 2012-Present
 - o Council, 2011-Present
 - o Outreach Committee, 2011-2013
- x Texas Commission on Judicial Selection, Member, 2019-Present
- x Texas 2036, Member, 2019-Present
- x Project on Government Oversight, Task Force on Federal Judicial Selection, Member, 2019-Present
- x American Academy of Appellate Lawyers, Fellow, 2019-Present; Board 2021-Present
- x American Academy of Arts and Sciences, Commission on the Practice of Democratic Citizenship Member, 2018-Present
- x Federal Judicial Evaluation Committee, 2017-Present
- x Texas Commission to Expand Civil Legal Services, Chair, 2015-Present
- x University of Texas Law School Foundation, Board of Trustees, 2009-Present; Chair of Communications Committee 2014
- x Holdsworth Center, Governing Board, 2015-Present; Governance and Nominating Committee Chair, 2021
- x University of Texas Development Board, 2014-Present
- x Friends of the University Political Action Committee Board, The University of Texas at Austin, 2014-Present
- x Texas Historical Commission, Commissioner, 2015-2021
- x Institute for the Advancement of the American Legal System, Justice Sandra Day O'Connor Judicial Selection Initiative, Board of Advisors, 2009-2020
- x Michigan State University College of Law, Board of Trustees, 2016-2019
- x American Bar Association, Commission of the Future of Legal Services, 2019-Present

PUBLICATIONS:

- x The Constitution Imparts Responsibilities as Well as Rights, *Journal of the Texas Supreme Court Historical Society*, Vol. 7, No. 4, pp. 21-25 (Summer 2018)
- x Reform the Partisan System, *79 Tex. B.J.* 90 (2016)
- x Reflections on the Principle of Stare Decisis from the Perspective of Judge and Advocate, *The Advocate* 9 (2015)
- x Foreword, *Texas Practitioner's Guide to Civil Appeals* (2014)
- x 19th Annual Justice William J. Brennan Lecture on State Courts and Social Justice, Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights, *88 New York University Law Review* 1953 (2013)
- x Recognizing and Combating the "School Prison" Pipeline in Texas, *National Center for State Courts* (2012)
- x William C. Vickrey, Douglas G. Denton, and Hon. Wallace B. Jefferson, Executive Session for State Court Leaders in the 21st Century, *Opinions as the Voice of the Court: How State Supreme Court Can Communicate Effectively And Promote Procedural Fairness* (2012)
- x Reform from Within: Positive Solutions for Elected Judges, *33 Seattle University Law Review* 625 (2010)
- x Chief Justice Wallace B. Jefferson & Rebecca Love Kourlis, An Analysis of Accountability in Judicial Selection: Recounting the Peril of Straight Party Voting, *53 The Advocate (Texas)* 8 (2010)
- x Visions of Best Practices for Texas Courts, *51 South Texas Law Review* 1021 (2010)
- x Op-Ed, Why Not Elect Judges on Merit, *DC /C2_0 1v93 (3 1 Tf i)-4.6 (n)10.9 meountrn*

x

EXHIBIT 2

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Years in Practice: **2**

Field of Practice: Appellate, Trial Collaboration, Complex Litigation,
Including class actions and mass torts

Hobbies: Cross-training, cooking, gardening, reading

MARCY HOGAN GREER is the Managing Partner of Alexander Dubose & Jefferson LLP, a nationally recognized appellate boutique firm. She has been acclaimed for her work in federal and state trial and

EXHIBIT 3

