

STATE OF SOUTH CAROLINA )

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, )

Plaintiffs, )

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. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-06675

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

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.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ B. Carmen Harper Thomas

Carmen Harper Thomas

SC Bar No. 76012

E-Mail: [carmen.thomas@nelsonmullins.com](mailto:carmen.thomas@nelsonmullins.com)

B. Rush Smith III

SC Bar No. 012941

E-Mail: [rush.smith@nelsonmullins.com](mailto:rush.smith@nelsonmullins.com)

A. Mattison Bogan

SC Bar No. 72629

E-Mail: [matt.bogan@nelsonmullins.com](mailto:matt.bogan@nelsonmullins.com)

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

*Attorneys for South Carolina Public Service Authority, W. Leighton Lord, III, William A. Finn, Barry Wynn, Kristofer Clark, Merrell W. Floyd, J. Calhoun Land, IV, Stephen H. Mudge, Peggy H. Pinnell, Dan J. Ray, David F. Singleton, and Jack F. Wolfe, Jr.*

Columbia, South Carolina

April 29, 2022

## EXPERT OPINION

Re: *Cook v. Santee Cooper*, Case No. 2017-CP-25-348, 2019-CP-23-0665, in the Court of Common Pleas, Thirteenth Judicial Circuit, Greenville County, South Carolina

We have been asked by the South Carolina Public Service Authority (Santee Cooper) to provide an independent expert opinion on Santee Cooper's compliance with Sections IV.A and IV.B of the Settlement Agreement 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 enlist 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, as signed 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 have 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 Dubose & 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 2013 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 sovereigns. 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 have also served on the Board of Advisors of the Justice Sandra Day O'Connor Judicial Selection Initiative. I am the Treasurer, member of the Council, 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. I have been certified in civil 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 Groce, Locke & Hebdon from 1988 to 1991, and then at my own San Antonio appellate boutique firm, Crofts, Callaway & Jefferson, from 1991 until my appointment to the Supreme Court of Texas in 2001. During that time, my practice focused primarily on appellate matters, resulting in more than sixty reported appellate decisions, including two favorable decisions from cases I argued in the Supreme Court of the United States. I have also served as an expert witness on attorney's fees regarding a case argued in the Supreme Court of the United States and am currently serving as an expert witness on various issues of Texas law in proceedings in Israel.

During my tenure on the Supreme Court of Texas, I reviewed and voted on more than ten thousand petitions for review and mandamus petitions. The Court issued approximately 1,900 opinions during that time, and I participated in all of them, other than the few instances in which I voluntarily recused myself due to a possible conflict of interest. I authored 99 majority opinions, as well as numerous concurrences, dissents, and per curiam opinions.

While on the Supreme Court of Texas, I participated in numerous cases involving issues affecting public utilities. Since returning to private practice, I have represented a variety of industry stakeholders in litigation before the Supreme Court of Texas and other Texas courts—and my clients have included utilities, utility customers, and the Texas electric grid operator, the Electric Reliability Council of Texas—in a wide range of issues affecting the provision of and payment for utility services.

### **Marcy Hogan Greer**

I am the managing partner at the law firm Alexander Dubose & Jefferson LLP, in Austin, Texas, USA. I have been a partner with Alexander Dubose & Jefferson LLP since January 2014. Prior to that time, I was an equity partner with Norton Rose Fulbright (US) LLP, having practiced with that firm for almost twenty years. Before joining Norton Rose Fulbright, I clerked for the Honorable Carolyn Dineen King of the U.S. Court of Appeals for the Fifth Circuit.

I was licensed to practice law in 1990, and the majority of my practice has been concentrated in complex litigation and appellate law. I have been certified in civil appellate law by the Texas Board of Legal Specialization since 1997. I am also an elected member of the American Law Institute.

I have been admitted to practice before the U.S. Supreme Court, the Supreme Court of Texas, all of the U.S. circuit courts of appeal (except for the Sixth and D.C. Circuits), and all of the federal district courts in Texas, as well as the Northern District of Florida. I have been admitted to practice pro hac vice in individual cases before state and federal courts throughout the country where my expertise was utilized, particularly those involving class actions and mass torts.

I have negotiated, drafted, and implemented dozens of class action and complex, mass-tort settlements. One example of such a settlement agreement and implementation was in *Texas v.*

*Farmers*, No. GV-202501, in the 261st District Court of Travis County, Texas. Texas sued Farmers Group, Inc. and a number of corporate-related 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 scores 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 sub-classes and a complex combination of remedies. After an unsuccessful seven-year appeal by certain objectors,<sup>1</sup> 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 the American Bar Association's two-volume book, *PRACTITIONER'S 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 experts to testify regarding Santee Cooper's compliance with 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 Final Order and Judgment, the live pleadings, and the motions and briefing related to the trial court's approval of the Settlement Agreement downloaded from the Court's official website;
- (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 Santee Cooper's counsel multiple times 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 of pages of documents received from Santee Cooper relating to FYE 2021, including annual reports, board packages and presentations, spreadsheets, emails and other correspondence, Act 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;

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<sup>1</sup> *E.g.*, *Farmers Grp., Inc. v. Lubin*, 222 S.W.3d 417 (Tex. 2007); *Lubin v. Farmers Grp., Inc.*, No. 03-03-00374-CV, 2009 WL 3682602 (Tex. App.—Austin Nov. 6, 2009, no pet.).

- (e) We requested additional documents from Santee Cooper's counsel for further analysis, and they complied with all of these requests;
- (f) Santee Cooper agreed to continue our retention of Kevin M. Flaherty, a partner with the premier forensic accounting firm, Matson Driscoll & Damico LLP (MDD), to assist our review based on his extensive expertise and experience in utilities and finance;<sup>2</sup> and
- (g) We conferred with MDD about what data, materials, and information would help us assess Santee Cooper's compliance with the Settlement Agreement;
- (h) Our team met twice with John F. Painter (Painter), CEO and Executive Consultant of nFront Consulting LLC (nFront), Santee Cooper's consultant as to the models used by Santee Cooper to evaluate its costs due to the loss of the Sugar Camp Complex coal supply and the V.C. Summer I fire (discussed below), and he produced additional documents and data that we requested and answered all of our questions to our satisfaction; and
- (i) We conferred with Mr. Flaherty and had internal discussions about Santee Cooper's *Cook v. Santee Cooper, South Carolina Public Service Authority 2021 Annual Compliance Report* (2021 Compliance Report) and all aspects of this expert report, as well as our research, analysis, and conclusions that form the basis of this report.

### **The Cook-Santee Cooper Settlement Agreement**

The Settlement Agreement ended a lengthy and extensive dispute over the failed construction of two nuclear reactors at the V.C. Summer site in Jenkinsville, South Carolina (Project), by South Carolina Electric & Gas n/k/a Dominion Energy Southeast Services, Inc. (Dominion) and Santee Cooper. The plaintiffs are direct and indirect utility customers who claimed that they should not have been charged for amounts related to the construction of the Project.

The court certified the "Class" as:

All Santee Cooper residential, commercial, industrial, and other customers, both direct and indirect, who paid utility bills that included rates calculated, in part, to pay pre-construction, capital, in-service, construction, interest, and other pre-operational costs associated with the V.C. Summer Nuclear Reactor Unit 2 and 3 Project from January 1, 2007, through January 31, 2020.

Settlement Agreement and Release (Mar. 17, 2020) (Settlement Agreement) § I.3.<sup>3</sup> 2021 Compliance Report, Exhibit A

There are two primary forms of relief for Santee Cooper's customers:

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<sup>2</sup> A copy of Mr. Flaherty's CV is attached as Exhibit 3.

<sup>3</sup> The Class definition excludes individuals and entities associated with the Defendants and the presiding judge. Agreement § I.3.

- a common benefit fund (Common Benefit Fund) for pro rata payments to the class members (§ IV.A); and
- a rate freeze consistent with the rates projected in Santee Cooper’s 1995 Reform Plan spanning 2020 through the end of 2024 (Rate Freeze) (§ IV.B).

#### **A. The Common Benefit Fund**

The Common Benefit Fund is to be funded by co-defendant Dominion (\$320 million in common stock and cash) and Santee Cooper (\$200 million in three annual-installment payments of \$65, \$65, and \$70 million dollars). Santee Cooper further agreed that its contribution to the Common Benefit Fund “will not be included in its revenue requirements or otherwise passed on to its customers by way of increased rates or charges, directly or indirectly, in its cost of service formula or otherwise passed on to its customers in any way either through increased rates or charges.” Settlement Agreement § IV.A.

After payment of costs and fees, the Common Benefit Fund is to be distributed on a pro rata basis to those class members who have not opted out of the class. Settlement Agreement §§ V.C & V.D. The first distribution includes the monetary contribution by Dominion and the initial \$65 million payment by Santee Cooper.

To facilitate this provision, Santee Cooper and Central were obligated to “deliver to the Settlement Administrator information sufficient for Class Counsel to allocate the Common Benefit Fund among the Class Members in relation to the estimated amounts collected from Class Members related to Santee Cooper’s involvement in the [Summer] Project (the ‘Class Member Payment Information’).” *Id.* § V.D. The Settlement Administrator then calculates the individual class member’s recovery, which is distributed either by a billing credit or check. *Id.* Class counsel described the ratio formula that is used to determine each class member’s recovery as “account[ing] for [the customer’s] contributions from those rates toward Project costs.” *Motion for Final Approval of Class Action Settlement* (July 10, 2020) (Final Approval Motion) at 29. Counsel provided this example:

Where [the customer’s] rates increased as a result of the Project costs, the contribution from those rates has been included in the methodology by calculating the ratio of the per-billing-unit charges as compared to an identified basis rate. For example, a customer whose production demand charge (and contribution) was half of the Industrial production demand charge used as the basis rate is considered to have contributed half as much to the Project through that particular rate.

*Id.* The Common Benefit Fund is thus designed to return the alleged Project overcharges to the customer.

#### **B. The Rate Freeze**

The Rate Freeze benefits class members by freezing Santee Cooper’s rates “consistent with the rates projected in the Reform Plan, beginning in 2020 upon approval of th[e Settlement] Agreement and extending through the end of 2024 (the ‘Rate Freeze Period’).” Settlement

Agreement § IV.B. The rates for its largest customer, Central Electric Power Cooperative (Central), during the Rate Freeze Period will be the rates and charges on Schedule A to the Settlement Agreement. *Id.* And Santee Cooper’s retail customers’ rates during the Rate Freeze Period are set forth Schedule B. *Id.*

As with the Common Benefit Fund, Santee Cooper agreed “not to defer any costs and expenses incurred or otherwise appropriately attributable to any year during the Rate Freeze Period to any other year or years during or after the Rate Freeze Period, except that Santee Cooper may defer to rates charged in years after the Rate Freeze Period ***just and reasonable costs and expenses incurred during the Rate Freeze Period resulting from***” certain enumerated circumstances. *Id.* § IV.B (emphasis added). Santee Cooper further stipulated that it would use “Good Utility Practices” as defined in its Coordination Agreement<sup>4</sup> with Central. The Coordination Agreement defines that concept:

Good Utility Practice at a particular time means any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts (including the then current practices, methods and acts engaged in or approved by a significant portion of the electric industry) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a number of possible practices, methods and acts.

Coordination Agreement at 5.

Among the circumstances excepted from the Settlement Agreement’s prohibition against deferring costs and expenses until after the Rate Freeze are: (1) “Change in Law; (2) fire or catastrophic failure of equipment; (3) “Named storm events;” and (4) “Deviations in Central’s actual loads ... as compared to Central’s billing determinants used in the Reform Plan<sup>5</sup> if such deviation exceeds +/- 4% on an annual (calendar) basis.” Settlement Agreement § IV.B.

Santee Cooper further agreed that:

to the extent its costs and expenses incurred or otherwise appropriately attributable to the Rate Freeze Period, using Good Utility Practices for operation and maintenance that are consistent with past practices and applicable accounting methodologies and allocations, exceed its revenues based on the Rate Freezes

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<sup>4</sup> *Power System Coordination and Integration Agreement Between South Carolina Public Service Authority and Central Electric Power Cooperative, Inc.* (Conformed through Dec. 31, 2015) (Coordination Agreement).

<sup>5</sup> The Santee Cooper Reform Plan, presented to the South Carolina General Assembly on November 25, 2019, is a voluminous and comprehensive plan for restructuring Santee Cooper in 2019. It includes governance reforms to “bring greater transparency to resource plans and the customer pricing they drive ....” Reform Plan at 1.



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. Santee Cooper's Other Settlement Obligations

The Settlement Agreement further requires that Santee Cooper provide an annual report, beginning April 30, 2021, through April 30, 2030, to the Court and Central “establishing Santee Cooper’s compliance with the terms and restrictions of §§ IV.A and IV.B.” Settlement Agreement § 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 § IV.C of the Settlement Agreement and following the Outline, Santee Cooper has provided us 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 “establish[] its compliance with the terms and restrictions of §§ IV.A and IV.B” of the Settlement Agreement during 2021?**

Yes.

***Common Benefit Fund Payment.*** Under Section IV.A, Santee Cooper was required to make a second annual installment payment of \$65 million to the Escrow Agent during this Reporting Period, which it accomplished on September 24, 2021, by wire transfer to the court-appointed Escrow Agent. *See* 2021 Compliance Report at 5 & Exhibit E. Santee Cooper utilized cash on hand and did not defer the expense, in accordance with the Settlement Agreement. *Id.* at 5-6 & Exhibit F.

***Rate Freeze.*** Santee Cooper has previously demonstrated that it froze its retail customer rates in accordance with Schedule B, *see, e.g.*, <https://www.santeecooper.com/news/2020/073120-Santee-Cooper-rates.aspx> (July 31, 2020). Santee Cooper has continued the rate freeze and has maintained that information on its website, along with frequently asked questions and answers to better inform customers: <https://www.santeecooper.com/about/increasing-value/rates/> (last visited Apr. 17, 2022). In addition, Santee Cooper produced examples of industrial, residential, commercial, lighting, and municipal customer, bills from 2021. *See* 2021 Compliance Report at 8-9 & Exhibits H, I & J. And Santee Cooper has continued to comply with its obligations to Central in connection with the rates frozen according to Schedule A to the Settlement Agreement by entering the frozen components directly into Central’s billing system. 2021 Compliance Report at 9 & Exhibits K, L & X.

**Exceptions.** For 2021, Santee Cooper has identified the following “potential exceptions” to the Rate Freeze from the time period, as reflected in its 2021 Compliance Report:

- Five “change[s] in the law:”
  - COVID-19 legislation, orders, and other actions related to the pandemic;
  - Act 90 of the South Carolina General Assembly;
  - A Rule Change in the steam electric power generating Effluent Limit Guidelines (ELG) by the U.S. Environmental Protection Agency (EPA);
  - 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 (ACOE);
  - A U.S. Mine Health and Safety Administration (MHSA) order closing the Sugar Camp Mine Complex, adversely impacting Santee Cooper’s largest coal supplier.
- The August 2021 Fire at the Sugar Camp Mine Complex operated by Foresight Coal Supply LLC;
- The November 2021 Fire at the V.C. Summer 1 Unit;
- A “named storm event,” Tropical Storm Elsa, which passed through South Carolina on July 8, 2021; and
- A “deviation[] in Central’s actual load[] ... as compared to Central’s billing determinants ... that exceeds +/-4%.”

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 11-12 & 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. *Id.* 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:

- hiring a staff person to support JBRC compliance;

- 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
- creating a staff position to evaluate and respond to additional document and information requests from ORS.

2021 Compliance Report at 12-13. These additional costs and expenses attributable to Act 90 compliance amount to \$259,276.51 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 13-14 & Exhibit Q.

*Change in law: St. Stephen Rediversion Project.* In July 2020, the ASBCA issued an order regarding Santee Cooper's agreement with ACOE relating to the St. Stephen Rediversion Project, requiring Santee Cooper and ACOE to negotiate new rates for power from the St. Stephen Hydroelectric Plant. 2021 Compliance Report at 14-16 & Exhibit R. Specifically, based on a historic agreement, Santee Cooper had agreed to purchase power from the St. Stephen plant to compensate Santee Cooper for a decrease in generating capacity at its Jeffries Hydroelectric Station based on a negotiated formula that expired in 2015. *Id.* In September 2021, ACOE claimed that Santee Cooper owed a net amount of \$31 million for the period 2015-2021. Compliance Report at 15-16 & Exhibit S. Santee Cooper disputes that amount, contending instead that it owes ACOE only \$4,041,240 for the purchased power, and it accrued that amount in 2021. *See id.* at 16 & Exhibit T. The parties continue to negotiate, and no final resolution has been reached. *Id.* at 16.

*Sugar Camp Mine Fire and MSHA Closure Order.* In August 2021, a fire broke out in the Sugar Camp Mine Complex, operated by Foresight Coal Sales, LLC (Foresight), Santee Cooper's primary coal supplier. As a result of that fire and in response to elevated carbon monoxide readings, MSHA required withdrawal of all personnel from the entire underground mine area, 2021 Compliance Report, Exhibit MM, which Foresight declared to be an event of Force Majeure under its contract with Santee Cooper. *See id.* at 17-18 & Exhibit W. Both the fire and MSHA Order are claimed as exceptions to the Settlement Agreement, which caused a loss to Santee Cooper in the amount of \$37,828,343. *Id.* at 16, 19. This figure is calculated as the amount Santee Cooper was required to spend for replacement coal and other costs to replace the power that Santee Cooper would have generated from the planned supply of coal from Foresight. 2021 Compliance Report at 16-19 & Exhibit BB. The extensive, detailed modeling used by Santee Cooper to determine these incremental costs was prepared with the assistance of nFront Consulting LLC. *Id.* at Exhibit BB. In addition to reviewing the nFront report, we also had numerous communications with the report's author regarding the model methodology the inputs included in the model, as well as reviewed supplemental underlying summary data. We have determined that nFront Consulting team is highly qualified in the evaluation and modeling of power costs and our tests of the model

are consistent with nFront’s conclusion that “the impact on Santee Cooper’s costs of the Coal Mine Event [for 2021] was \$37,828,343 ....” 2021 Compliance Report, Exhibit BB at 13.

*VC Summer I Fire.* November 15, 2021, marked another fire, this time caused by an internal fault in a transformer at the VC Summer Nuclear Station Unit 1. 2021 Compliance Report at 20. The VC Summer 1 Unit was taken offline between November 15 and December 10, 2021. *Id.* at 20 & Exhibit CC. The full extent of the damage to the transformer has not yet been determined, but it has been catastrophic. *Id.* at 20-21.

Santee Cooper owns one-third of the VC Summer Unit 1; Dominion owns the other two-thirds. *Id.* at 20. Santee Cooper has calculated its portion of the remediation and repair costs—some of which should be covered by insurance—to be \$578,663 for FYE 2021, and that amount will likely be reduced in the future in resolution of the insurance claim. 2021 Compliance Report at 21-22 & Exhibits DD & EE.

Santee Cooper was also required to replace the power that would have been generated by the VC Summer 1 absent the transformer failure and fire. Santee Cooper’s modeling for that replacement power was prepared with the assistance of nFront. Based on our review of the nFront report, the summary underlying data, and our communications with the report’s author, our tests of the model are consistent with nFront’s conclusion that “the impact of the ... Summer I Forced Outage [for 2021] was \$5,011,713.” 2021 Compliance Report at 21-22, Exhibit BB at 13.

*Tropical Storm Elsa.* As to the tropical storm, Santee Cooper has documented out-of-pocket costs and expenses of \$175,069.99 during FYE 2021. Compliance Report at 22 & Exhibit HH. FEMA reimbursement is not available for the storm because South Carolina was not declared a disaster state. *Id.* at 22.

*Central’s Load Deviation.* Santee Cooper analyzed variances between Central’s billing determinants from January through December 2021 and Santee Cooper’s own projections under the Reform Plan, concluding that as to Supplemental Capacity and Transmission billing, the variances were 4.3%, which exceeds the 4% threshold of § 1V.B of the Settlement Agreement. 2021 Compliance Report at 23. These variances translate into load-variance value of approximately \$15 million that Santee Cooper has documented and established. *See* 2021 Compliance Report at 23-24.

***Revenue-Cost Analysis.*** Santee Cooper is not entitled to recover costs and expenses that exceed its revenues during the Rate Freeze Period. Settlement Agreement § IV.B. In its *Summary of 2021 Reporting Period Actual Costs v. Revenues*, Santee Cooper demonstrates that its costs and expenses did not exceed revenues in 2021. 2021 Compliance Report at 24-25 & Exhibit KK.

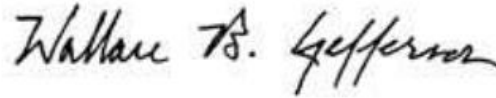
***Debt Issuance Update.*** Santee Cooper issued additional debt in 2021 to refund outstanding debt (Series 2021A) and borrow new money (Series 2021B), *see* 2021 Compliance Report at 25, and it is our understanding that there is no claim that this issuance impacts Santee Cooper’s obligations under the 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



Wallace B. Jefferson  
ALEXANDER DUBOSE & JEFFERSON, LLP  
515 Congress Ave., Ste. 2350  
Austin, Texas, U.S.A. 78701-3562

April 22, 2021

# EXHIBIT 1

**Wallace B. Jefferson**  
**Partner, Alexander Dubose & Jefferson LLP**  
**515 Congress Avenue, Suite 2350**  
**Austin, Texas 78701**  
**T: 512.482-9300 | F: 512.482-9303**  
**E: wjefferson@adjtlaw.com**

**SUMMARY:**

Wallace B. Jefferson is a partner at Alexander Dubose & Jefferson. Prior to joining the firm in October 2013, he served as Chief Justice of the Supreme Court of Texas. Appointed to the Supreme Court in 2001 and named Chief Justice in 2004, Jefferson made Texas judicial history as the Court's first African-American Justice and Chief Justice. He led the Court's efforts to fund access to justice programs; helped reform juvenile justice; and inaugurated a statewide electronic filing system for Texas courts. During his time on the bench, Jefferson was elected President of the Conference of Chief Justices, an association of chief justices from the 50 states and U.S. territories.

A graduate of the James Madison College at Michigan State University and the University of Texas School of Law, Jefferson is the namesake for *Wallace B. Jefferson Middle School* in San Antonio.

He has been honored with the 2014 Texas Center for Legal Ethics Chief Justice Jack Pope Professionalism Award, given to a judge or attorney who personifies the highest standards of the legal profession; the 2014 Texas Appleseed J. Chrys Dougherty Good Apple Award because of his leadership in seeking equality for all Texans, especially the less fortunate; and the 2015 Anti-Defamation League Austin Jurisprudence Award, honoring an outstanding member of the legal community who exhibits a commitment to equality, justice, fairness, and community service. In 2016, he was honored with the Presidential Citation Award from The University of Texas. This award recognizes extraordinary contributions of individuals who personify the university's commitment to transforming lives.

Jefferson is the Treasurer of American Law Institute, Chair of the Texas Commission to Expand Civil Legal Services, a Fellow of the by-invitation-only American Academy of Appellate Lawyers, and a member of the Texas Commission on Judicial Selection. Jefferson has been certified in Civil Appellate Law by the Texas Board of Legal Specialization since 1993 and has twice won cases he argued in the Supreme Court of the United States.

He is licensed to practice in the United States Supreme Court, the Supreme Court of Texas, the United States Court of Appeals for the Fifth Circuit, and the United States Court of Appeals for the Federal Circuit.

**EDUCATIONAL BACKGROUND:**

- B.A., James Madison College, Michigan State University, 1985
- J.D., University of Texas School of Law, 1988

**HONORARY DEGREES:**

- J.D., Austin College, 2012
- J.D., University of New Hampshire School of Law, 2011
- J.D., Michigan State University, 2009

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

**PROFESSIONAL BACKGROUND:**

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

**BOARD CERTIFICATION:**

- Board certified in civil appellate law by the Texas Board of Legal Specialization, 1993 to Present

**PROFESSIONAL HONORS AND AWARDS:**

- Distinguished Lawyer Award, Austin Bar Association, 2020
- Presidential Citation Award, University of Texas, 2016
- Lifetime Achievement Award, Texas Lawyer, 2015
- Jurisprudence Award, Anti-Defamation League Austin, 2015
- Inaugural Wallace B. Jefferson Award, Texas Access to Justice Foundation, 2014
- J. Chrys Dougherty Good Apple Award, Texas Appleseed, 2014
- Chief Justice Jack Pope Professionalism Award, Texas Center for Legal Ethics, 2014
- Texan of the Year, Texas Legislative Council, 2014
- Outstanding Public Service Award, National Forum for Black Public Administrators, 2014
- Outstanding Texas Leader Award, John Ben Shepperd Public Leadership Institute, 2014
- MLK Association of Texas – Wallace B. Jefferson LSAT Prep Scholarship – 2014
- Texas Hero, Texas NAACP, 2013
- Distinguished Alumnus Award, University of Texas, 2013
- Lifetime Achievement Award, Texas Minority Council Program, 2013
- Morton A. Brody Distinguished Judicial Service Award, Colby College, 2012
- Namesake for Wallace B. Jefferson Middle School, San Antonio, 2007
- Outstanding Alumnus, Michigan State University, 2007
- Robert L. Hainsworth Outstanding Service Award, Houston Lawyer’s Association, 2006
- Outstanding Alumnus, University of Texas School of Law, 2005
- Distinguished Alumnus, James Madison College, 2002
- President’s Award, San Antonio Bar Association, 2001
- Outstanding Young San Antonian Distinguished Service Award, Rotary Club of San Antonio, 2000
- “Pillars of the Foundation Award, Northside Independent School District, 1999
- Outstanding Young Lawyer, San Antonio Lawyers Association, 1997
- “40 Under 40 Rising Stars,” San Antonio Business Journal, 1996
- African American Lawyers Section of the State Bar of Texas – Chief Justice Wallace B. Jefferson Trailblazer Award



**PROFESSIONAL ACTIVITIES**

- Lexitas, Board of Directors, 2020-Present
- American Law Institute, Member, 2001-Present
  - Treasurer, 2014-Present
  - Executive Committee, 2014-Present
  - Executive Compensation Committee, 2014-Present
  - Membership Committee, 2013-Present
  - Restatement Third, Law of Consumer Contracts, Adviser, 2012-Present
  - Council, 2011-Present
  - Outreach Committee, 2011-2013
- Texas Commission on Judicial Selection, Member, 2019-Present
- Texas 2036, Member, 2019-Present
- Project on Government Oversight, Task Force on Federal Judicial Selection, Member, 2019-Present
- American Academy of Appellate Lawyers, Fellow, 2018-Present; Board, 2021-Present
- American Academy of Arts and Sciences, Commission on the Practice of Democratic Citizenship, Member, 2018-Present
- Federal Judicial Evaluation Committee, 2017-Present
- Texas Commission to Expand Civil Legal Services, Chair, 2015-Present
- University of Texas Law School Foundation, Board of Trustees, 2009-Present; Chair of Communications Committee, 2014
- Holdsworth Center, Governing Board, 2015-Present; Governance and Nominating Committee Chair, 2021
- University of Texas Development Board, 2014-Present
- Friends of the University Political Action Committee Board, The University of Texas at Austin, 2014-Present
- Texas Historical Commission, Commissioner, 2015-2021
- Institute for the Advancement of the American Legal System, Justice Sandra Day O'Connor Judicial Selection Initiative, Board of Advisors, 2009-2020
- Michigan State University College of Law, Board of Trustees, 2016-2019
- American Bar Association, Commission of the Future of Legal Services, 2014-2015
- Federal Judicial Conference of the United States, Committee on Rules of Practice and Procedure, 2010-2014
- American Bar Foundation, Board of Directors, 2012-2014
- Conference of Chief Justices, President, 2010-2011; Amicus Brief Review Team, 2004-2013
- Legal Services Corporation, Pro Bono Task Force, 2011
- San Antonio Public Library Foundation, Director, 1997-2001
- Texas State Commission on Judicial Conduct, 1999-2001
- San Antonio Bar Association, President, 1998-1999
- William S. Sessions American Inn of Court, President, 1999
- Alamo Area Big Brothers Big Sisters, Director, 1995-1999
- Supreme Court of Texas Advisory Committee

**PUBLICATIONS:**

- *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)
- *Reform the Partisan System*, 79 Tex. B.J. 90 (2016)
- *Reflections on the Principle of Stare Decisis from the Perspective of Judge and Advocate*, 73 The Advocate 9 (2015)
- *Foreword*, Texas Practitioner's Guide to Civil Appeals (2014)
- 19<sup>th</sup> 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)
- *Recognizing and Combating the "School-to-Prison" Pipeline in Texas*, National Center for State Courts (2012)
- 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)
- *Reform from Within: Positive Solutions for Elected Judiciaries*, 33 Seattle University Law Review 625 (2010)
- 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)
- *Visions of Best Practices for Texas Courts*, 51 South Texas Law Review 1021 (2010)
- Op-Ed, *Why Not Elect Judges on Merit, Not Whim?*, Dallas Morning News (Mar. 12, 2009)
- Barbara Rodriguez Mundell & Wallace B. Jefferson, Executive Session for State Court Leaders in the 21st Century, *Herding Lions: Shared Leadership of State Trial Courts*, National Center for State Courts (2008)
- *Access to Justice*, 70 Texas Bar Journal 687 (2007)
- Wallace B. Jefferson, Gib Walton, & Larry Sager, *Thinking Like a (Pakistani) Lawyer*, Austin American Statesman (Dec. 7, 2007)
- *Legal Malpractice in Texas: Examining Selected Cases and Forecasting Future Trends*, 35 St. Mary's Law Journal 979 (2004)
- *Stare Decisis*, 8 Texas Review of Law and Politics 271 (2004)
- *State of the Judiciary*, 2005, 2007, 2009, 2011, 2013, all of which were published in the Texas Bar Journal

## EXHIBIT 2



Marcy Hogan Greer  
Alexander Dubose & Jefferson LLP  
515 Congress Ave., Ste. 2350  
Austin, Texas 78701  
mgreer@adjtlaw.com  
Years in Practice: 32  
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 appellate courts throughout the country. Ms. Greer received the 2021 Gregory S. Coleman Outstanding Appellate Lawyer Award from the Texas Bar Foundation, which honors Greg Coleman’s legacy to the appellate bar, requiring that the recipient demonstrate an outstanding appellate practice while maintaining a strong commitment to providing legal services for the underserved, dedication to mentoring young attorneys, and a strong moral compass to guide both professional and personal pursuits. Her practice consistently includes class action and mass tort cases, including federal multidistrict litigation. This experience contributed to her recognition in *Chambers USA: America’s Leading Lawyers for Business* in Appellate Litigation—Texas; listing in *The Best Lawyers in America* in Appellate, Bet-the-Company, and Commercial Litigation; and selection as the “Lawyer of the Year” in 2016 and 2012 for Austin Appellate Practice and 2015 for Austin Bet-the Company Litigation. Ms. Greer also has been recognized as a Texas *Super Lawyer* for her appellate work since its inaugural list and has been repeatedly listed in the Top 100 Texas Lawyers, Top 50 Central Texas Lawyers, and Top 50 Women Lawyers recognized by that publication. Ms. Greer clerked for the Hon. Carolyn Dineen King, the former Chief Judge of the U.S. Court of Appeals for the Fifth Circuit in 1993–94. After her clerkship, Ms. Greer joined the law firm of Fulbright & Jaworski L.L.P. (now Norton Rose Fulbright US LLP), where she practiced for almost twenty years and was a partner for ten years. Ms. Greer has been board-certified in civil appellate law by the Texas Board of Legal Specialization since 1997. In addition, Ms. Greer has been a member of the State Bar Pro Bono College for almost all of her career, requiring at least 75 hours of pro bono work each year. She is currently representing her second death-row inmate, Louis Castro Perez, and has obtained orders from the Texas criminal court staying execution and permitting DNA testing and reanalysis in order to support a claim for actual innocence. In June 2017, Ms. Greer was awarded the Louise B. Raggio award given by the Texas Bar Association’s Women and the Law Section to recognize an attorney who has actively addressed the needs and issues of women in the legal profession and in the community. She also served as the Lead Pro Bono Partner with Texas Applesed on a major project for the Supreme Court of Texas focused on improving the lives of foster children in Texas and was awarded the Texas Bar Association’s Frank J. Scurlock Award for Outstanding Legal Services to the Poor in 2011. Ms. Greer was elected to the American Law Institute and is a member of the by-invitation-only Federation of Defense and Corporate Counsel. She currently serves as the Diversity Officer for the American Bar Association’s Tort Trial and Insurance Practice Section and on the Executive Committee of the Center for Women in Law. Ms. Greer continues to be active in the community as a Trustee and former President of the Texas Supreme Court Historical Society; a Member of the Board of Governors for the Bar Association of the Fifth Federal Circuit; a member of the Texas Supreme Court Advisory Committee; a member of the Oversight Board of the Texas Office of Capital and Forensic Writs; and the Secretary and Board Member for Marathon Kids, Inc. Ms. Greer received her B.A. from Emory University and her J.D. from the University of Houston Law Center. She is a Lifetime Member of Girl Scouts USA and was a Troop Leader for five years. She designed, and was the original National Editor of, *A Practitioner’s Guide to Class Actions* (2010), as well as the 2012 supplement, and the second edition (2017). She is the National Co-Editor of the third edition, which was published in November 2021.

## EXHIBIT 3



## Kevin M. Flaherty | CPA, CVA | Partner

T 617.426.1551 • F 617.426.6023 • E kflaherty@mdd.com • 10 High Street, Suite 1000 • Boston, MA 02110

### Education

Babson College Bachelor of Science – Accounting – Wellesley, MA 1988

### Position

Matson, Driscoll & Damico, LLP – (1988 – Present)

### Professional Experience

- > Involved in hundreds of engagements involving the evaluation and quantification of damages, including lost profits, extra expenses, major construction costs, stock and contents, and employee theft/embezzlement. These damages have ranged in magnitude from under \$5,000 to in excess of \$300 million.
- > Involved in audit of reinsurance programs, including analysis of financial statements of insurance companies, holding companies and captives.
- > Involved in personal injury matters.
- > Assignments involving the tracking of funds such as ponzi scheme, fraud, employee dishonesty, in various businesses including broker dealers and other financial institutions.
- > Involved in the determination of the value of businesses for use in stockholder disputes divorce and other matters.
- > Involved in matters involving stock purchase/buy sell agreements.
- > Involved in partnership/shareholder disputes including analysis of internal financial reporting systems.
- > Involved in class action matters including damage evaluation, class certification and modeling
- > Involved in matters involving consumer actions and alleged deceptive marketing schemes
- > Appointed Special Master in Massachusetts Superior court for the purpose of calculating the amounts due under various judgments involving partnership/shareholder disputes.
- > Worked directly with work out/problem loan units of commercial lending institutions to provide assurances as to collateral value, as well as the borrowing corporations abilities to meet immediate obligations, and generate short & long-term cash flows.
- > Retained on behalf of the insurance carrier or the insured/plaintiff in reference/arbitration cases, acting as either a referee/representative or umpire.
- > Retained in GM automotive dealership termination arbitrations as set forth by the United States Congress related to GM bankruptcy and Federal TARP funds.
- > Involved in the measurement of damages attributable to potential environmental contamination, including impact on use as collateral in refinancing.
- > Involved in the measurement of damages attributable to wrongful termination and sexual discrimination claims.
- > Involved in the measurement of damages arising from violation of the Lanham Act.
- > Retained as an expert witness in the area of accounting and damage evaluation, including admission as an expert witness in Federal court, as well as New Hampshire & Massachusetts Superior courts.
- > Involved in the measurement and evaluation of costs on major highway and tunnel construction and building construction costs.
- > Involved in multiple cases requiring the evaluation of financial condition of individuals and corporations in determination of a potential motive for arson.
- > Extensive exposure to numerous industries including, but not limited to, paper and lumber, professionals, retail operations, utilities, high technology, etc.
- > Involved in numerous cases in a “litigation support” role including review and analysis of transcripts, preparation of inquiries of witnesses under oath and expert testimony, preparation of experts reports, assistance with all aspects of discovery including preparation of document responses and propounding document requests.
- > Speaker at various ABA meetings, law firms and insurance companies in the area of forensic accounting and Damages.