

## **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.

This opinion sets forth our opinions based on the materials identified below and our research and analysis of the information we have been provided and we 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 an equity partner at 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 also serve on the Board of Advisors of the Justice Sandra Day O'Connor Judicial Selection Initiative. 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. 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 Court 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, 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 an equity 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 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 implementing a variety of class-action settlements.

I am the National Editor of the American Bar Association's two-volume book, *A PRACTITIONER'S GUIDE TO CLASS ACTIONS* (1st ed. 2010; 2d ed. 2017), and will be the National Co-Editor of the Third Edition, which is expected to be published in August 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 reviewed thousands of pages of documents received from Santee Cooper, including annual reports, board packages and presentations, spreadsheets, emails and other correspondence, communications with the South Carolina General Assembly, 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;
- (c) We discussed the Settlement Agreement and the implementation process with Santee Cooper's counsel to further familiarize ourselves with the matters involved;
- (d) We requested additional documents from Santee Cooper's counsel for further analysis, and they complied with all of these requests;

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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) Santee Cooper granted our request to retain Kevin M. Flaherty, a partner with the premier forensic accounting firm, Matson Driscoll & Damico LLP (MDD), to exploit his expertise and experience in utilities and finance;<sup>2</sup> and
- (f) We conferred with MDD about what data, materials, and information would help us assess Santee Cooper's compliance with the Settlement Agreement;
- (g) Our team met with Santee Cooper's Treasurer, Suzanne Ritter, who answered all of our questions to our satisfaction; and
- (h) We conferred with Mr. Flaherty and had internal discussions about Santee Cooper's *Cook v. Santee Cooper, South Carolina Public Service Authority 2020 Annual Compliance Report* (2020 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.)<sup>3</sup> 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. Central Electric Power Cooperative, Inc. (Central) is Santee Cooper's largest direct customer, providing utility services to its members through the cooperative.

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>4</sup>

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

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

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

<sup>3</sup> This report will refer to SCE&G or Dominion depending on the context.

<sup>4</sup> The Class definition excludes individuals and entities associated with the Defendants and the presiding judge. Agreement § I.3.

- 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 (f/k/a SCE&G) (\$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.

In order 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] contribution 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. Central’s rates 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 the 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>5</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) “Named storm events;” and (3) “[d]eviations in Central’s actual loads ... as compared to Central’s billing determinants used in the Reform Plan<sup>6</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 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.

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<sup>5</sup> *Power System Coordination and Integration Agreement Between South Carolina Public Service Authority and Central Electric Power Cooperative, Inc.* (Conformed Dec. 31, 2015) (Coordination Agreement).

<sup>6</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.

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), attached as Exhibit B to *Cook v. Santee Cooper, South Carolina Public Service Authority 2020 Annual Compliance Report* (2020 Compliance Report), that the parties agreed to follow in preparing the annual reports. See *Santee Cooper's Memorandum in Support of Final Approval* (July 18, 2020), at Exhibit C.

In fulfillment of its obligation under § IV.C of the Settlement Agreement and following the Outline, Santee Cooper has provided us its 2020 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 2020?**

Yes.

**Common Benefit Fund Payment.** Under Section IV.A, Santee Cooper was required to make a first annual installment payment of \$65 million to the Escrow Agent in the third quarter of 2019,<sup>7</sup> which it accomplished on September 25, 2020, by wire transfer to Huntington National Bank, the court-appointed Escrow Agent.

According to the 2020 Compliance Report and the supporting materials, Santee Cooper timely provided the Class Member Payment Information to the Settlement Administrator Epic. The Effective Date of the Settlement Agreement was October 1, 2020, and Santee Cooper forwarded the information to Jay Ward and Ricky Borges at Epic on that date.

The Settlement Administrator then calculated the bill credits and checks for the class members, and for the active class members who were entitled to a bill credit (16,755 customers), Santee Cooper provided them a credit on their bills sent between December 1, 2020, and December 31, 2020, as illustrated in the “Chart of Credits Applied to Active Accounts,” Exhibit K to the 2020 Compliance Report. The 708 accounts originally entitled to a bill credit, but that had become inactive, were sent checks instead by Epic. See Exhibit L to 2020 Compliance Report. The

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<sup>7</sup> If insurance proceeds were available to fund any part of Santee Cooper’s payment obligation to the Common Benefit Fund, then those proceeds were to be paid by Santee Cooper “upon receipt.” Settlement Agreement § IV.A. We understand that there were none.

remaining class members were sent checks for their initial payments of the pro rata amounts of the Common Benefit Plan. *Id.*

Consistent with Generally Accepted Accounting Principles, Santee Cooper recorded its entire \$200 million obligation to the Common Benefit Fund in 2019, predating the Rate Freeze Period, and that recordation is reflected in its 2019 Annual Report at 92 nn. 16 & 17. And Santee Cooper has confirmed in its Annual Reports that it will not seek to recover any part of these payments through rates. *See* 2020 Annual Report at 97 n.15; *see also* 2019 Annual Report at 92 n.16. Santee Cooper used funds on hand to make the first installment payment of \$65 million in 2020. This is a balance-sheet entry that reduced the existing liability, so no additional costs or expenses were recorded. The impact of the accounting treatment is that the \$200 million was recorded on 2019 financial statements and will not be recorded on future financial statements. Therefore, it will not affect future rates. This treatment is consistent with Santee Cooper's obligations under § IV.A of the Settlement Agreement.

**Rate Freeze.** Under § IV.B, Santee Cooper obtained the requisite approval by resolution from its Board of Directors on July 31, 2020. It posted the Settlement Agreement, as well as Frequently Asked Questions (and answers), on its website on July 27, 2020, where they remain to this day. <https://www.santeecooper.com/About/Increasing-Value/Rates/Index.aspx>. The information is also available at <https://www.santeecooperclassaction.com>.

Santee Cooper has shown that it froze its retail customer rates in accordance with Schedule B with examples of bills from August 2020 (reflecting usage from August 1, 2020). And Santee Cooper complied 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.

Santee Cooper identified three "potential exceptions" to the Rate Freeze from the time period reflected in the 2020 Compliance Report:

- A "change in the law," namely COVID-19 legislation, including the Families First Coronavirus Response Act, executive orders, and emergency orders related to the pandemic;
- A "named storm event," Hurricane Isaias, which passed through South Carolina on August 3, 2020; and
- A "deviation[] in Central's actual load[] ... as compared to Central's billing determinants ... that exceeds +/-4%."

Compliance Report at 13-17. As to the first exception, Santee Cooper has documented out-of-pocket costs and expenses of \$5.2 million (of which \$1.6 million is expected to be attributable to the Rate Freeze Period) and is exploring whether some or all of that amount will be reimbursed by the Federal Emergency Management Agency (FEMA).<sup>8</sup> As to the hurricane, Santee Cooper has

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<sup>8</sup> If reimbursed, Santee Cooper will deduct the amount of that reimbursement.

documented out-of-pocket costs and expenses of \$1.23 million. FEMA reimbursement is not available for the hurricane because South Carolina was not declared a disaster state.

For purposes of the third exception, Santee Cooper analyzed variances between Central's billing determinants from August through December 2020 and its projections under the Reform Plan, concluding that as to Supplemental Capacity and Transmission billing, the variances were 9.3%, more than double the 4% threshold. These variances translate into load-variance value of over \$13 million that Santee Cooper has documented and established.

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 2020 Reporting Period Actual Costs v. Revenues* (Exhibit KK to its 2020 Compliance Report), Santee Cooper demonstrates that its costs and expenses did not exceed revenues in 2020.

Santee Cooper reports that it will continue to evaluate these potential exceptions, as circumstances are likely to change, and that no final decision has been made as to whether these costs and expenses will be deferred beyond 2024 when the Rate Freeze ends. 2020 Compliance Report at 13-14. That is the only obligation that Santee Cooper has at this time—to identify those potential exceptions. Assessing the reasonableness of these projected exceptions, which currently appear reasonable, will follow if and when those exceptions are implemented in fact.

**2020AB Bonds.** Central and Class Counsel have expressed concerns about Santee Cooper's compliance with the Settlement Agreement in connection with its sale of bonds, Series 2020A (tax-exempt) and Series 2020B (taxable) (2020AB). Santee Cooper issued and sold these bonds on October 28, 2020.

We were provided the communications between Central, Class Counsel, and Santee Cooper and were made aware of their concerns at the outset of our engagement. We researched and reviewed the materials and information regarding the bonds and carefully questioned Santee Cooper about them. We consulted with our expert, Mr. Flaherty, who also reviewed the voluminous materials and was permitted to ask questions of Santee Cooper and its counsel. As a result, we are now comfortable with our understanding of the bond transaction and our conclusions below.

Santee Cooper refinanced existing, higher-interest-rate bonds with new, lower-interest-rate bonds, which affords the company considerable savings over the life of the bonds. Specifically, Santee Cooper reduced the average interest rates, shortened the average life of the debt, and lowered the principal balance on the refinanced debt. And by issuing the Series A (tax-exempt) bonds at a premium, Santee Cooper obtained \$100 million in "new money" to finance identified projects that qualify for tax-exempt financing. Because of that premium, Santee Cooper only has to repay \$84 million of that "new money."

Central and Class Counsel are concerned about whether:

- Santee Cooper has shifted principal and interest payments from the Rate-Freeze Period to the Post-Rate-Freeze Period;

- The \$100 million in tax-exempt “new money” proceeds will be used to pay off debt that will come due during the Rate Freeze Period; and
- Santee Cooper is entitled to refund the \$65 million installment paid to the Common Benefit Fund from its Capital Improvement Fund.

Santee Cooper has provided responses to each of these concerns, contending that its conduct in issuing the 2020A/B bonds is consistent with its obligations under the Settlement Agreement.

As to the first concern, we have found no prohibition in the Settlement Agreement that would forbid Santee Cooper from issuing bonds. In fact, Santee Cooper had been active in the bond markets for many years preceding the Agreement. The very low interest rates preceding the bond issuance—and the possibility that those rates may rise in the future—presented an appealing opportunity to issue bonds. Santee Cooper was not unique in making that assessment. A significant number of municipalities and public power entities likewise took advantage of the timing to issue debt. PFM Financial Advisors LLC advised Santee Cooper on the bond transaction, BofA Securities (which underwrote the 2020AB Series transactions) provided a detailed analysis of the issuance, and Nixon Peabody provided a bond opinion. These noted experts confirmed that the bond refinance provided a savings to Santee Cooper and complied with applicable laws. We have confirmed that Santee Cooper expects a significant savings in its debt service as a result of the 2020AB bonds that will be realized both during and after the Rate Freeze Period.

Second, Santee Cooper has committed to use the “new money” for capital expenditures that are part of its capital improvement project, identifying several specific projects for that purpose. These projects were considered by ORS and appear to have been chosen “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 [and] would ... be[] expected to accomplish the desired result at a reasonable cost consistent with reliability and safety.” Coordination Agreement at 5 (defining “Good Utility Practices”). Keeping in mind that “Good Utility Practices is not 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,” we have deferred to Santee Cooper’s judgment on the priorities for those projects. In our opinion, these priorities fall in the category of “reasonable judgment” afforded Santee Cooper under Good Utility Practices.

Third, the Settlement Agreement does not prohibit Santee Cooper from using cash from its Capital Improvement Fund to make the settlement payments. The methodology for distributing the Common Benefit Fund was negotiated as a proxy for each class member’s proportionate contributions to the overcharges in connection with the Project. Class Counsel and Central have indicated that Santee Cooper’s \$200 million payments to the Common Benefit Fund are in the nature of a refund of those overcharges. It cannot be true that Santee Cooper is refunding the class members’ overpayments yet at the same time replacing money reserved for capital improvements with newly obtained funds. The settlement payments to the class members restore Santee Cooper to the same position it would have occupied had those funds not been collected from customers; therefore, the use any new money raised in the bond is properly reviewed under the “Good Utility

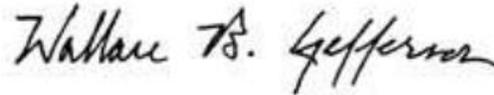
Practices” standard. Under that standard, the bond issuance was a reasonable exercise of Santee Cooper’s discretion that was not precluded by any term in the Settlement Agreement.

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

Respectfully submitted,



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April 22, 2021

# EXHIBIT 1

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**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, Wallace 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, honoring 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
  - Council, 2011-present
  - Executive Committee, 2014-present
  - Executive Compensation Committee, 2014-present
  - Membership Committee, 2013-present
  - Outreach Committee, 2011-2013
  - Restatement Third, Law of Consumer Contracts, Adviser, 2012-present
  - Treasurer, 2014-present
- 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
- American Academy of Arts and Sciences, Commission on the Practice of Democratic Citizenship, Member, 2018 – Present
- Michigan State University College of Law, Board of Trustees, 2016-2019
- Texas Commission to Expand Civil Legal Services, Chair, 2015-present
- Texas Historical Commission, Commissioner, 2015-present
- American Bar Association, Commission of the Future of Legal Services, 2014-2015
- University of Texas Law School Foundation, Board of Trustees, 2009-Present; Chair of Communications Committee, 2014
- Holdsworth Center, Governing Board, 2015-present
- University of Texas Development Board, 2014-present
- Friends of the University Political Action Committee Board, The University of Texas at Austin, 2014-present
- Institute for the Advancement of the American Legal System, Justice Sandra Day O'Connor Judicial Selection Initiative, Board of Advisors, 2009-2020
- 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:**

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

Marcy Hogan Greer is the Managing Partner of Alexander Dubose & Jefferson in its Austin, Texas, office. She is recognized for her work in federal and state trial and appellate courts throughout the country. Her practice includes class action and mass tort cases, including federal and state multidistrict litigation. This experience contributed to her recognition in Chambers USA: America's Leading Lawyers for Business in Litigation: Appellate—Texas, accreditation in 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. Marcy has also been recognized as a Texas Super Lawyers 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.

She has handled class actions of all types and served as the National Editor for the American Bar's best-selling book, A Practitioner's Guide to Class Actions (2d ed. 2017), including its original edition in 2010 and 2012 supplement, and will be National Co-Editor of the Third Edition anticipated in 2021.

Marcy received the 2021 Gregory S. Coleman Outstanding Appellate Lawyer Award from the Texas Bar Foundation. The award was established in 2011 in honor and memory of Gregory S. Coleman. The award celebrates the high ideals and standards that Coleman demonstrated in his appellate practice and personal life. The recipients exhibit an outstanding appellate practice while maintaining a strong commitment to providing legal services for the underserved. The award recognizes dedication to mentoring young attorneys as well as a strong moral compass to guide both professional and personal pursuits. In June 2017, Marcy 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 the community. She also served as the Lead Pro Bono Partner with Texas Appleseed 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.

Marcy was elected as the Diversity Officer of the Tort Trial & Insurance Practice Section of the American Bar Association to serve a three-year term from 2019-2022, and she is currently the TIPS liaison to the ABA Diversity Center. Marcy continues to serve on multiple TIPS committees and task forces and will Co-Chair the TIPS Section Conference in 2021. The Supreme Court of Texas recently appointed Marcy to its

Remote Proceedings Task Force focused on eliminating barriers to participation in remote online court proceedings in the wake of the COVID-19 pandemic. She has also been active in the State Bar of Texas Appellate Section—currently serving on its Strategic Planning Committee, as Chair of the Section in 2009-10, and as its Course Director for the 33rd Annual Advanced Appellate Course in 2019.

Marcy 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 on the Executive Committee of the Center for Women in Law and 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; the Secretary and Board Member for Marathon Kids. Marcy founded a Girl Scout troop for second-grade girls (including her youngest daughter) in 2015 and was the Troop Leader for five years.

After completing a clerkship for the Honorable Carolyn Dineen King, the former Chief Judge of the United States Court of Appeals for the Fifth Circuit, Marcy 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. She has been Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization since 1997.

# EXHIBIT 3



## FORENSIC ACCOUNTANTS

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

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

#### Position

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

#### Professional Experience

- > Involved in 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 engagements in the power and utility industry including determining lost profits, extra costs etc.
- > Involved in establishing systems of controls and cost capturing to accurately track repair and rebuild costs.
- > Involved in catastrophic loss situations such as Katrina, 9/11, Sandy etc.
- > 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.
- > 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.

#### Certifications & Memberships

Certified Public Accountant

Certified Valuation Analyst

#### Education

1988 Bachelor of Business of Science in Business Administration -Accounting – Babson College – Wellesley, MA