

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 to assess Santee Cooper's compliance with Sections IV.A and IV.B of the Settlement Agreement and Release (Settlement Agreement)¹ 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. 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 we 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 give the Court a compliance report, and we 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

¹ The Settlement Agreement is "Exhibit A" to the *Order Granting Preliminary Approval of Class Action Settlement and Continuing Stay of Pre-Trial Proceedings* at 6-7, in *Jessica S. Cook v. S. Carolina Pub. Serv. Auth.*, No. 2019-CP-23-06675 (Ct. Com. Pleas, Greenville, Mar. 17, 2020).

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 United States Court of Appeals for the Fifth Federal Circuit, 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,² 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 settlement counsel in negotiating, drafting, and implementing a variety of class-action, mass-tort, and other complex 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, 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 Opinion 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 next three years following our first report to discuss the continuation of the settlement-implementation process during FYE 2021, FYE 2022, and FYE2023;

² *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.).

- (d) We have reviewed over 3,000 pages of documents received from Santee Cooper relating to FYE 2023, 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;
- (e) Santee Cooper agreed to continue our retention of Kevin M. Flaherty and Aaron Isch with the premier forensic accounting firm, Matson Driscoll & Damico LLP (MDD), to assist our review based on their extensive expertise and experience in utilities and finance;³ 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 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 on Santee Cooper's fuel costs. After our meeting, Mr. Painter produced additional documents and data and answered our questions to our satisfaction; and
- (h) We conferred with Messrs. Flaherty and Isch and had internal discussions about Santee Cooper's *Cook v. Santee Cooper*, *South Carolina Public Service Authority 2023 Annual Compliance Report* (2023 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 Project's construction.

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.

³ A copy of Mr. Flaherty's CV is attached as Exhibit 3, and Mr. Isch's CV is attached as Exhibit 4.

Settlement Agreement at § I.3.⁴

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
- 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 was 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 also 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 has been and will continue 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 included the monetary contribution by Dominion and Santee Cooper’s initial \$65 million payment.

To facilitate this distribution, 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 calculated the individual class member’s recovery, which was 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.

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

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 suspending Santee Cooper's rates "consistent with the rates projected in the Reform Plan, beginning in 2020 upon approval of the [Settlement] Agreement and extending through the end of 2024 (the 'Rate Freeze Period')." Settlement Agreement § IV.B. The rates during this period for its largest customer, Central Electric Power Cooperative (Central), 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 Agreement⁵ 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; (3) catastrophic failure of equipment; (4) "[n]amed storm events;" (5) flood; and (6) "Act of God." 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

⁵ *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).

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.

Id.

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 to 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* 2023 Compliance Report Exhibit B.

To fulfill its obligation under § IV.C of the Settlement Agreement and tracking the Outline, Santee Cooper has given us its 2023 Compliance Report, accompanied by voluminous exhibits, all of which we have reviewed. Based on those materials and the other materials we have independently examined, researched, and reviewed as described in this report, 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 2023?

Yes.

Common Benefit Fund Payment. Santee Cooper has timely paid the three annual installments as agreed in § IV.A of the Settlement Agreement to the Escrow Agent prior to this Reporting Period. *See* 2023 Compliance Report at 4. Santee Cooper used cash on hand and did not defer the expense, in accordance with the Settlement Agreement. *Id.* at 4-5.⁶

Distribution of settlement funds to class members. The class members were to receive their compensation in two distributions, one that occurred in November 2020; the second and final distribution was to take place 60 days after Santee Cooper’s \$70 million payment in September 2022, as described immediately above. *See, e.g.,* Settlement Agreement, Exhibit A (“Distribution Plan”), § III.B. However, the parties jointly obtained the Court’s permission to defer that deadline because a significant number of class members had not received or cashed their checks from the initial distribution. *See Order Approving Plan for Further Administration and Subsequent Distributions of Settlement* (Dec. 13, 2022) at 2. They also obtained the Court’s approval of

⁶ These events have been fully documented by Santee Cooper in its prior Compliance Reports.

changes in the distribution plan designed to provide the class members whose checks were undeliverable and uncashed with credits on their bills or replacement checks. *Id.* Santee Cooper fulfilled its obligations under the Order:

(1) in February-March 2023, Santee Cooper applied credits to the bills of 90% of the class members so identified by the Settlement Administrator and provided the account information for the 4,830 accounts that were no longer active to the Settlement Administrator so that it could send checks to those 4,830 account holders; and

(2) in October-November 2023, Santee Cooper applied credits to the bills of 98% of the class members so identified by the Settlement Administrator and provided the account information for the 141 accounts that were no longer active to the Settlement Administrator so that it could send checks to those 141 account holders.

2023 Compliance Report at 6-8.

Rate Freeze. Santee Cooper has continued the rate freeze and has displayed that information on its website, along with frequently asked questions and answers, designed to better inform customers: <https://www.santeecooper.com/rates/> (last visited Apr. 20, 2024). In addition, Santee Cooper produced examples of industrial, residential, commercial, lighting, and municipal customer bills from 2023. *See* 2023 Compliance Report at 12 & Exhibits Q, R, & S. 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. 2023 Compliance Report at 12-13 & Exhibit U.

Exceptions. Santee Cooper has identified the following “potential Exceptions” to the Rate Freeze during 2023:

- Six “change[s] in the law:”
 - Act 90 of the South Carolina General Assembly^{*7};
 - 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*; and

⁷ *Exceptions flagged with an asterisk are ones that have been discussed in Santee Cooper’s prior Compliance Reports and our prior expert reports, which are incorporated by reference.

- Change in Law – Federal Energy Regulatory Commission (“FERC”) Order 881; and
- FERC license issuance regarding Santee Cooper Hydroelectric Project No. 199.
- The August 2021 Fire at the Sugar Camp Mine Complex operated by Foresight Coal Supply LLC*;
- The November 2021 catastrophic equipment failure and fire at the V.C. Summer 1 Unit*; and
- One “named storm event:” Idalia; and
- Act of God and Flood: Winyah Generating Station Rain Event.

2023 Compliance Report at 15. Each Exception is addressed below.

*Act 90 Change in Law.** This Exception relates to Act 90 of the South Carolina General Assembly, which 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 previously described the additional oversight and reporting requirements associated with Act 90 and has documented the following additional costs as necessary to comply with the law in 2023:

- funding partial compensation for a staff person to support JBRC compliance;
- funding partial compensation for additional personnel, including multiple consultants, and expending other resources in connection with a more extensive process associated with the Integrated Resource Plan (IRP) that must now be submitted to the PSC in 2023 (and every three years afterward);
- costs associated with hearings before the PSC and related proceedings relative to Santee Cooper’s application for approval by the Competitive Procurement of Renewable Energy (CPRE) program to procure solar energy resources. *See* S.C. Code Ann. § 58-31-227; and
- funding partial compensation for a staff position to evaluate and respond to additional document and information requests from ORS.

2023 Compliance Report at 16-21. These additional costs and expenses attributable to Act 90 compliance amount to \$2,599,642.22 for FYE 2023. *See id.*

In addition, Santee Cooper updated the information regarding its compliance with Act 90 to include an additional \$307,109.60, representing costs accrued in 2022 that were not paid until 2023. 2023 Compliance Report at 21. As Santee Cooper maintains its financial records on an accrual basis, those costs are properly recorded in 2022. *See id.*

*Changes in EPA ELGs.** EPA published a final rule for steam electric power ELGs in 2020. *See* Steam Electric Reconsideration Rule, 85 FR 64,650 (Oct. 13, 2020) (codified at 40 C.F.R. 423). The new rule “imposes performance standards that have required Santee Cooper to incur costs and expenses to install additional wastewater treatment systems” at two generating stations—Winyah and Cross. 2022 Compliance Report at 18. Santee Cooper began work in 2021 to comply with the rule change by implementing a pilot study at the Cross generating station and reported on that work in its 2021 Compliance Report at 13-14. Central agrees that the ELG compliance costs were required by a “Change in Law” and thus are an Exception to the Rate Freeze. Central has provided input on Santee Cooper’s compliance with the ELG rules, and the parties have agreed to certain compliance options for the Winyah and Cross generating stations. 2023 Compliance Report at 22. To implement these rule changes, Santee Cooper incurred costs of \$56,642,607 in 2023. *See id.* at 23 & Exhibit Z.

Change in law: St. Stephen Rediversion Project.* This Exception has been described in our 2022 Expert Opinion at 10-11. Santee Cooper continues to negotiate the amount it owes the Army Corp of Engineers for power purchased from the St. Stephen hydroelectric plant, and no final resolution has been reached. 2023 Compliance Report at 23. Because the matter is still in negotiation, Santee Cooper has accrued \$2,852,640 for purchased power in 2023. *Id.* & Exhibit AA.

*Sugar Camp Mine Fire and MSHA Closure Order.** This exception has been described in our 2023 Expert Opinion at 11-12. As a result of the August 21, 2021 fire in the Sugar Camp Mine Complex—operated by Foresight Coal Sales, LLC (Foresight), Santee Cooper’s primary coal supplier—and in response to elevated carbon monoxide readings, MSHA required withdrawal of all personnel from the entire underground mine area, which Foresight declared to be an event of Force Majeure under its contract with Santee Cooper. *See* 2023 Compliance Report at 24. 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 \$135,276,799 for 2023. 2023 Compliance Report at 23-24, 27. 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. 2023 Compliance Report at 26-27 & Exhibit DD (nFront Report). The extensive, detailed modeling used by Santee Cooper to determine these incremental costs was comprehensively evaluated by nFront Consulting LLC. *Id.* & Exhibit DD. In addition to reviewing the nFront report, we also had 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 net cost to be recovered in future periods due to the Coal Mine Event is approximately \$135.3 million.” *See* 2023 Compliance Report, Exhibit DD at 8 & Table 2, line 16. Santee Cooper has been proactive to mitigate the losses occurring from the mine fire, including renegotiating with Foresight and other coal suppliers for below-market prices for replacement coal. 2023 Compliance Report at 25-26.

*VC Summer I Fire.** On November 15, 2021, an internal fault in a transformer at the VC Summer Nuclear Station Unit 1 caused a fire. 2023 Compliance Report at 27. The catastrophic damage to the transformer has required extensive remediation, repair, and preparatory work to replace the transformer, which was underway throughout 2023. *Id.* at 27-28. In addition, Santee

Cooper has contracted with Hitachi for a spare transformer. *Id.* at 28 n.8. Santee Cooper has incurred expenses of \$6,012,390.07 in these efforts, a portion of which it anticipates its insurer will cover. *Id.* at 28 & Exhibit EE.

Hurricane Idalia. This category 3 hurricane hit Florida on August 30, 2023, and pushed through Georgia and into the Carolinas as a tropical storm with winds of 60 mph. 2023 Compliance Report at 29 & Exhibit FF. South Carolina Governor Henry McMaster declared a state of emergency, and FEMA declared Idalia to be an emergency, *id.* at 29 & Exhibit GG. The storm impacted over 2,700 Santee Cooper customers. *Id.* at 29. Santee Cooper has documented direct costs and expenses of \$995,720.45, including costs to secure infrastructure to restore power and minimize Idalia's other adverse impacts. *Id.* at 29-30 & Exhibits HH & II. FEMA reimbursement is available to reimburse Santee Cooper for its storm expenses at 75% of approved costs, and Santee Cooper commenced the process for requesting reimbursement in February 2024. *Id.* at 30 & Exhibit KK. The reimbursement process remains underway, and Santee Cooper will update the numbers when available. 2023 Compliance Report at 30.

*Hurricane Ian (2022).** This category 1 hurricane made landfall in South Carolina on September 30, 2022, and was reported in Santee Cooper's 2022 Compliance Report at 37-38 & Exhibits LL, QQ. As indicated in that earlier report, Santee Cooper applied to FEMA for reimbursement of eligible costs, and it received \$326,548.50 from FEMA in 2023, thus reducing the costs incurred for the 2022 Reporting Period to \$2,904,898.30. *See* 2023 Compliance Report at 30 & Exhibit LL. Further reimbursements are anticipated and will be reported when received. *Id.*

FERC Order 881. On December 16, 2021, FERC issued a new final rule under its authority in "the Federal Power Act to improve the accuracy and transparency of electric transmission line ratings." 177 FERC ¶ 61,179 (Dec. 16, 2021), <https://www.ferc.gov/media/rm20-16-000-final-rule>. It also revised its *pro forma* Open Access Transmission Tariff. *Id.* These regulatory changes will impact Santee Cooper by requiring it to implement new ratings, maintain a database relating to transmission-line ratings and methodologies, and share this information with regional transmission organizations and independent system operators. 2023 Compliance Report at 31-32. In order to comply with these requirements by the July 12, 2025 deadline, Santee Cooper engaged consultants and incurred expenses of \$763,959.03. *Id.* at 32 & Exhibit PP.

FERC License Renewal. Santee Cooper has been in discussions with FERC for some time regarding licensure for its Hydroelectric Project No. 199. 2023 Compliance Report at 33. FERC issued a new license for the project on January 20, 2023. *Id.* at 32-33 & Exhibit QQ. In connection with its application for a new 50-year FERC license, Santee Cooper had to comply with new regulatory requirements FERC has added, including those related to developing and implementing fish studies and building fish lifts. *Id.* at 33-34. The expense attributable to that compliance work, including consultant costs, in 2023 was \$784,893.93. *Id.* at 34 & Exhibit SS.

Winyah Generating Station Landfill Rain Event. On December 17, 2023, a coastal storm caused a 100-year-flood event when Georgetown County, South Carolina received between 11-13 inches of rain. *See* South Carolina State Climatology Office, December 2023 Coastal Storm: Open File Report at 8, <https://www.dnr.sc.gov/climate/sco/Publications/Open-File-Report-December-2023-Coastal-Storm.pdf> (Dec. 21, 2023). The flooding caused significant damage to the Winyah

Generating Station landfill. 2023 Compliance Report at 34-35. The ash containment system cracked, the drainage system was overwhelmed, and ash leaked onto a neighboring property. 2023 Compliance Report at 35-36. Santee Cooper incurred \$260,612.20 in costs for remediation and repair in 2023, and the expenses for repair have continued in 2024. *Id.* at 36.

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 2023 Reporting Period Actual Costs v. Revenues*, Santee Cooper demonstrates that its costs and expenses did not exceed revenues in 2023. 2023 Compliance Report at 36-37 & Exhibit YY. In fact, its revenues exceeded its costs and expenses by \$365.8 million for 2023. *Id.* at 36 & Exhibit YY.

Regulatory Asset. The Santee Cooper Board has authorized the use of regulatory accounting for Exceptions identified in its 2020 and 2021 Cook Compliance Reports, including any future adjustments to those exception amounts (“Regulatory Asset”). *See* 2022 Compliance Report at 41 & Exhibit XX at 160-61. “The regulatory asset accounting treatment is allowed when certain expenses are incurred in a period other than when they will be collected.” *Id.* As of the end of 2023, Santee Cooper recorded total costs of \$625.1 million in the regulatory account associated with the Cook Settlement, including the 2023 Exceptions. 2023 Compliance Report at 37 & Exhibit C.

Debt. Santee Cooper issued no additional bonds in 2023. 2023 Compliance Report at 38. To fund a portion of the Exception costs included in the Regulatory Asset, Santee Cooper borrowed \$445 million through its Commercial Paper and Direct Pay Letters of Credit programs. 2023 Compliance Report at 38 & Exhibit AAA. The cost to service the debt on the Regulatory Asset in 2023 was \$20,697,409. *Id.* & Exhibit AAA.

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

Respectfully submitted,



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April 30, 2024

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, 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.

Jefferson is Chair of the Texas Commission to Expand Civil Legal Services, a Fellow of the by-invitation-only American Academy of Appellate Lawyers, and a Council member of the American Law Institute. He serves on the Board of Lexitas and the Project on Government Oversight. 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

- Brennan Center for Justice, State Court Report Advisory Board, 2023-present
- Office of American Possibilities, National Leadership Council for Frontline Justice, 2023-present
- Board of Trustees, Texas State History Museum Foundation, 2023-present
- Trusted Driver, Inc., Chief Community Officer, 2023
- American Bar Association, Task Force on Law, Society and the Judiciary, 2022-present
- Project on Government Oversight, Board, 2022-present; Task Force on Federal Judicial Selection, Member, 2019-present

- 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, 2014-2023
 - Awards Committee, Chair, 2023-Present
- Texas Commission on Judicial Selection, Member, 2019-present
- Texas 2036, 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
- Federal Judicial Evaluation Committee, 2017-present
- Texas Commission to Expand Civil Legal Services, Chair, 2015-present
- Texas Historical Commission, Commissioner, 2015-2021
- Michigan State University College of Law, Board of Trustees, 2016-2019
- 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; 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
- 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:

- *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)
- 19th Annual Justice William J. Brennan Lecture on State Courts and Social Justice, *Liberty and Justice for Some: How the Legal System Falls Short in Protecting Basic Rights*, 88 New York University Law Review 1953 (2013)
- *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: 33
Field of Practice: Appellate, Trial Collaboration, Complex Litigation,
Including class actions and mass torts
Hobbies: Travel, 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. She additionally received the 2022 Pro Bono/Community Service Award from the University of Houston Law Center Alumni Association. Most recently, she received the 2024 Distinguished Lawyer Award from the Austin Bar Foundation. 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 50 Central Texas 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. 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 Vice Chair for the American Bar Association’s Tort Trial and Insurance Practice Section and recently completed a six-year term on the Executive Committee of the Center for Women in Law. Ms. Greer chaired the Business Court and Fifteenth Court of Appeals Subcommittees for the Texas Supreme Court Advisory Committee in proposing rules for the two new courts. She continues to be active in the community as a Greenhill Fellow and former President of the Texas Supreme Court Historical Society; a Member of the Board of Trustees for the Bar Association of the Fifth Federal Circuit; a member of the Oversight Board of the Texas Office of Capital and Forensic Writs; and served for 12 years as 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



ELECTRONICALLY FILED - 2024 Apr 30 1:32 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2306675

Kevin Flaherty

CPA, CVA | Partner

Kevin joined MDD Forensic Accountants in 1988 and is a Partner at the firm's Boston office.

A specialist in the evaluation and quantification of economic damages, Kevin has worked on assignments of all sizes - from claims of \$5,000 to those in excess of \$800 million.

Over the years, Kevin has focused on a variety of matters involving shareholder disputes, **divorce**, **business valuations**, Ponzi and embezzlement matters. His wide-ranging industry experience focuses on engagements involving the evaluation and quantification of damages with a focus on **lost profits** and damaged property. Notably, he was retained to evaluate **construction damages** related to the "Big Dig" in Boston and the events surrounding 9/11, including the collapse of World Trade Center 7.

Kevin has been retained as a consultant on litigation matters and has also qualified as an expert witness in both state and Federal courts and is also the head of its U.S. litigation services group.

Kevin graduated from Babson College with a Bachelor of Science degree.

Industry Experience

- > Construction
- > Financial Services
- > Food Services
- > Healthcare
- > Manufacturing
- > Pharmaceuticals
- > Professional Services

Practice Areas

- > Business Disputes & Shareholder Disputes
- > Business Valuation
- > Construction Litigation
- > Fidelity Claims
- > Fraud and Investigations
- > Litigation Support
- > Surety Bond Matters

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EXHIBIT 4



ELECTRONICALLY FILED - 2024 Apr 30 1:32 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2306675

Aaron Isch

CPA, CVA | Manager

Aaron joined MDD Forensic Accountants Boston office in 2014. He is a manager at the firm.

Aaron has worked on assignments across most of our practice areas concentrating on **business interruption, cyber risks, business disputes & shareholder disputes, business valuation, personal injury & wrongful death, lost profits, and post-acquisition disputes**. He is also actively involved in the **catastrophe services** area, quantifying economic damages resulting from natural disasters, including hurricanes Harvey, Irma, Maria & Ida, California Wildfires, and the 2021 freeze in Texas.

His industry experience includes **financial services, food services, healthcare, hospitality & tourism, manufacturing, professional services, and retail**.

Aaron provides litigation support services to clients and has given expert witness testimony at depositions.

He has presented seminars on business interruption and liability losses.

Aaron recently completed a six-month secondment as a Claims Manager within Beazley's Cyber and Technology group.

He received his Bachelor of Science in Accounting & Master of Business Administration from Salve Regina University.

Industry Experience

- > Financial Services
- > Food Services
- > Healthcare
- > Hospitality and Tourism
- > Manufacturing
- > Professional Services
- > Retail

Practice Areas

- > Business Disputes & Shareholder Disputes
- > Business Interruption
- > Business Valuation
- > Cyber Risks
- > Lost Profits
- > Personal Injury & Wrongful Death
- > Post-Acquisition Disputes

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