July 18, 2005

The Honorable Glenn F. McConnell
27 Bainbridge Drive
Charleston, South Carolina 29407

Dear Mr. Chairman:

Upon your appointment on March 4, 2005, our subcommittee began its work of considering all legislation[1] relating to the Public Service Authority of South Carolina ("Santee Cooper"), conducting public hearings in three geographic areas primarily served by Santee Cooper,[2] and, finally, screening the Governor's appointments to the Santee Cooper Board.[3] Subject to the Governor making further or interim appointments to the Board, we have completed our hearings and screening deliberations. We offer this report of our findings.

Our work with legislation impacting Santee Cooper and the three "open mike" public forums proved to be invaluable aids to our subcommittee during screening. Both subcommittee members and staff faced an enormous learning curve in order to "get up to speed" on the operations of Santee Cooper and the challenges it faces. We, as members, and our staff invested hundreds of hours in reviewing many issues. Our goal was to conduct screenings worthy of your challenge to the subcommittee to apply a litmus test of "whether the appointee is of a caliber that a large investor-owned utility would select him or her for Board membership." In designing our work plan, we aimed to learn from the Senate's past mistakes.

Confirmation Process - 2003

[1] The legislation relevant to the South Carolina Public Service Authority considered by the subcommittee was as follows: S. 371, S. 308, S. 52, S. 233, and S. 573. S. 573 (Act 137 of 2005), the most comprehensive of these bills, was enacted into law on May 25, 2005.

[2] Public hearings were held in the following cities: Conway, S.C. on March 31, 2005; Litchfield, S.C. on April 4, 2005; and Moncks Corner, S.C. on April 7, 2005.

[3] The Governor submitted the following appointments: Carl Owens Falk (an interim appointment) on December 10, 2004 (Georgetown county seat); Guerry E. Green (an interim appointment) on December 10, 2004 (chairman at-large); John T. Molnar on February 14, 2005 (Horry county seat); and G. Dial Dubose on January 11, 2005 (Third Congressional District seat). The Governor later withdrew his appointments of Carl Owens Falk and Guerry E. Green on May 23, 2005. The Governor appointed Oscar L. Thompson III on May 23, 2005, to replace his withdrawn nominee, Guerry Green (chairman at large). Finally, interim appointments of Dr. Molnar and Mr. Thompson were made on June 15, 2005.

Within seven months of his inauguration in 2003, Governor Sanford named eight appointees to Santee Cooper's eleven-member Board.[4] Six of the appointments were transmitted within approximately one month of the General Assembly's scheduled Sine Die adjournment, June 5, 2003.[5] At the Governor's request, the Senate Judiciary Committee expedited consideration of five of the six of these late-session appointments so that they were confirmed between May 15 and June 3, 2003.[6]

In order to expedite the 2003 hearing process, the Committee relied solely upon SLED background checks, credit reports, candidate applications, and letters of reference. No meaningful hearings were conducted. In fact, four of the five appointees were screened in the auditorium of the State House in a meeting lasting no more than fifteen minutes.[7] Unfortunately, our efforts to expedite these appointees' confirmations have exacted high costs. Where the Committee could have inquired about familiarity with Santee Cooper's operations and history, it chose to presume sufficient background. Where the Committee could have delved into each appointee's education and career experiences, the Committee assumed that each appointee had the skills and background requisite to provide valuable service to Santee Cooper. Where the Committee should have established a common understanding with each appointee as to the public interests served by Santee Cooper, it presupposed that the agency's mission was understood and accepted. The Committee was wrong. We have addressed each of these shortcomings in our hearings.

Confirmation Process - 2005 (Background)

With your assistance and guidance, the subcommittee, through its staff, pursued development of research materials and sources to underpin the subcommittee's deliberations. Beginning in early March, staff began to catalogue issues raised during the three public hearings, reported in the media, or derived from constituent contacts. Some of the issues identified could be portrayed as supporting recent Santee Cooper board actions or deliberations (i.e. whether Santee Cooper executives were appropriately compensated and whether recently departing executives were given excessive exit compensation).[8] Other issues could be viewed as arguing against recent actions or deliberations (i.e. whether the recently released Credit Suisse/First Boston valuation report was properly developed, negotiated, approved, and monitored).[9]

From a draft list of more than two dozen issues, staff narrowed the list to ten issues. Excluded were those issues where: (1) no predicate in fact could be established, (2) relevance to

[4] Governor Sanford appointed Thomas Graham Edwards on March 27, 2003; Vernie E. Dove, G. Dial Dubose, Guerry E. Green, and Keith D. Munson on April 29, 2003; Richard Coen on May 13, 2003; Clarence Davis on May 28, 2003; and James W. Sanders on July 29, 2003.

[5] The appointments of Dove, Dubose, Green, Munson, Coen, and Davis were submitted on or after April 29, 2003.

[6] Appointees Dove, Dubose, Green, and Munson were all confirmed on May 15, 2003. Appointee Coen was confirmed on June 3, 2003.

[7] These four appointees were appointees Dove, Dubose, Green, and Munson; all were confirmed on May 15, 2003.

[8] Governor Sanford raised the issue of executive compensation in an editorial in The Post and Courier on May 1, 2005, titled "Urge Legislators Not to Give Away Keys to Santee Cooper."

[9] Kyle Stock of The Post and Courier covered the valuation study in an article on May 6, 2005 titled "Utility as Private Business Examined."

the subcommittee's deliberations was questionable, and (3) substantiation of the issue would likely require significant testimony from current and former Santee Cooper employees whose motives, impartiality, or independence might be challenged. Staff sought to avoid involving any current employees in the investigatory or hearing process except to utilize their assistance in locating background materials or relevant correspondence. It was the staff and the subcommittee's aim to spare these employees from becoming embroiled in issues that generally arose at the Director level and which might result in their feeling involved in matters "above their pay grade." The subcommittee's work was very document driven.

We agree with staff's assessment that each of the ten issues addressed in the hearings were adequately defined and established through available written documentation. Aside from the rare exceptions noted, the subcommittee relied upon a trail of correspondence, both written and electronic in format and minutes of board and committee meetings. All of these materials were made available to the appointees and the media.[10] They are also incorporated into the court reporter's certified transcript of the proceedings.

The ten issues, aside from matters bearing on a candidate's individual qualifications, considered by the subcommittee were:

(1) History of Santee Cooper valuation studies and the development and production of the Credit Suisse/First Boston study released on May 5, 2005;

(2) Director involvement in a vendor's solicitation to sell coal to Santee Cooper;

(3) The propriety of Director communications with Bond Rating agencies;

(4) Board actions relating to the sale of surplus property;

(5) The sufficiency of Board oversight of executive compensation;

(6) Board compliance with the Freedom of Information Act (FOIA);

(7) Board actions relating to gypsum industry recruitment;

(8) Board oversight of Santee Cooper charitable giving and corporate sponsorships;

(9) Board understanding and recognition of Santee Cooper's relationship to its largest customer - Central Electric Cooperative; and

(10) Director temperament and behavior.

[10] See Michael Couick's letter dated May 12, 2005, to the Honorable James E. Brogdon concerning documents requested for research.

Over one-half of the subcommittee's time spent in hearings (approximately 22 hours) was dedicated to receiving briefings on these issues.[11] The subcommittee did not wish to consider any existing Board member's reappointment divorced from the context of overall Board performance and activities. New appointments were expected to recognize the challenges faced by the Board and express a willingness to address them.

The Committee also sought guidance as to the proper role of directors serving an enterprise as large as Santee Cooper. While we often take its size for granted, Santee Cooper is the nation's second largest public power utility (in terms of generation capacity).[12] Total revenues in South Carolina are nearly on par with the South Carolina revenues of Duke Power and SCE&G.[13] Santee Cooper generates more megawatt-hours than SCE&G or Progress Energy (in its South Carolina operations).[14] Approximately 40% of the electric customers and 70% of the state's land mass are served directly or indirectly by Santee Cooper. The reach of these megawatts is truly from the mountains to the sea and from the Savannah River to the North Carolina border. Santee Cooper is a large utility which has a significant impact on this State.

We sought guidance from the previous law and Act 137 of 2005, as well as from legal experts on Board of Directors' duties and responsibilities. The subcommittee is particularly grateful to James Gilreath, Esquire, who appeared and offered thoughtful insight as to what should be expected of boards of directors.[15] Mr. Gilreath's experience as a lawyer practicing in this area and as a long-term member of the board of directors of one of the state's larger publicly traded corporations lent substantial credibility to his remarks.[16] In fact, the Committee has yet to hear from anyone who disputes the core of his testimony relating to directors' duties of care and loyalty. News media sought and received independent confirmation of these standards.[17] The subcommittee believes that these duties serve as touchstones for private industry, are at the heart of Act 137 of 2005, and should be acknowledged by any Santee Cooper Board appointee prior to his confirmation.

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[11] Subcommittee hearings were held on the following dates: May 17, 2005; May 18, 2005; May 19, 2005; May 24, 2005; May 31, 2005; and June 2, 2005. The transcript and exhibits presented at these hearings totaled 1,932 pages.

[12] See news releases from Santee Cooper dated April 19, 2005, titled "Santee Cooper's Green Power Generating Station Dedicated in Lee County."
http://www.santeecooper.com/aboutus/newsroom/releases/2005/news_2005_0419.html

[13] For the calendar year of 2003, Santee Cooper's total revenue was $1,043,776,000. Duke Power's revenue for the same year was $1,207,804,000; SCE&G's was $1,454,686,000.

[14] Again in the calendar year 2003, Santee Cooper generated 23,364,000 megawatt-hours. SCE&G generated 22,822,532 megawatt-hours and Progress Energy generated 7,541,380 megawatt-hours.

[15] TR, May 17, 2005, pp. 9-61, Ex. #1.

[16] James R. Gilreath is the founder of The Gilreath Law Firm, P.A., in Greenville, S.C. During the course of his 37 years of practice, he has participated as lead counsel or co-lead counsel in numerous civil cases involving complex corporate tax or securities matters. He has served as a member of the Board of Directors of a NASDAQ traded corporation for many years. For a portion of that service, he has served as Chairman of the corporation's Compensation Committee.

[17] Ex. #37. An article by Kyle Stock of The Post and Courier on May 29, 2005, titled "Santee Cooper Board: Did it Overstep its Bounds," addresses these standards.

Corporate Directors' Duty of Loyalty, Duty of Confidentiality, and Duty of Care[18]

A board of directors has a general duty to act in the best interests of a corporation. This general duty manifests itself in three particular and important forms: the duty of loyalty, the duty of confidentiality, and the duty of care. In the typical corporate setting, that duty of loyalty extends to the shareholders, as owners of the corporation. In the case of Santee Cooper, which is a quasi-public utility, the board owes a duty of loyalty not to shareholders, but rather to its customers and bondholders, as well as to the people of South Carolina by way of the people's elected representatives in the General Assembly and the Governor.

A board should always act collectively. It is improper for one member or a minority group of members to engage in activities that are generally in the realm of management or where the board should act officially and as a whole. Therefore, a member or members should not engage in "rogue" or "lone wolf" activities as those activities defeat the purpose of having a collaborative board of directors. Board members should not engage in micromanagement. This means that the board should respect the role of management. Board members should treat one another with dignity and respect. Board members should always make full disclosure regarding any possible conflicts of interest. If a board member or one who is associated with or related to a board member stands to benefit from dealings with Santee Cooper, the board member should unambiguously and publicly disclose such information.

With respect to the general duty of confidentiality, board members should be aware of confidentiality issues. Because Santee Cooper is a public entity and subject to the provisions of the FOIA, every effort should be made by the board to have open, public discussions.[19] However, this does not mean that sensitive matters which could potentially harm the entity's legal or financial interests or its employees should be made public. The law recognizes this reality by providing limited exemptions from disclosure for certain matters.[20] The duty of confidentiality should not preclude a board member from insisting on compliance with FOIA or properly challenging unethical or criminal conduct.

Moreover, the actions of board members will satisfy the duty of care if those actions meet the requirements of "best practices." This requires the director to act in the best interests of the corporation. Also, when a director acts, he should act in good faith and with the level of care of an ordinarily prudent person in like circumstances. Thus, it is recommended that, in order to comply with the general duty of care, the board observe certain practices. First, the Board should ensure that Santee Cooper is in compliance with all applicable laws and regulations and that financial statements are accurate and complete. The Board should meet this requirement by making the necessary inquiries of management and outside advisors. Second, the Board should also take great care in choosing a CEO and other top executives. Once chosen, the Board should monitor the performance of those executives. This means that Board members should not take it upon themselves to discuss matters of significance with employees other than the CEO or those

[18] The summary of these various duties and responsibilities of Boards of Directors was gleaned from Mr. Gilreath's testimony and Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Some Thoughts for Boards of Directors in 2005* (Lipton article).
[19] The provisions of FOIA are contained in Chapter 4, Title 30 of the S.C. Code of Laws.
[20] See S.C. Code Ann. §§ 30-4-40 and 30-4-70.

designated by him. Therefore, the Board members should observe the chain of command and allow the CEO to oversee management. Third, Board members should regularly attend meetings and spend adequate time engaged in directorial duties. Fourth, Board members should obtain all relevant information from management and, if applicable, outside advisors before making business decisions. If a Board member complies with all of the above requirements, the member will generally be protected from liability under the "business judgment rule."

Mr. Gilreath also testified that Board members should be aware that Santee Cooper has voluntarily elected to follow the general requirements of the Sarbanes-Oxley Act of 2002,[21] which require Board members to possess an adequate level of competency to assess the financial reports of Santee Cooper. The Board also should ensure that there is an independent internal auditor who reports either to the Board or to a committee in order to prevent financial malfeasance on the part of management. Finally, the Board should ensure that decisions regarding executive compensation are independently made.

Timeliness of Subcommittee Deliberations

The subcommittee is acutely aware that the Judiciary Committee must find any appointment made by the Governor qualified prior to his participating as a Board member.[22] Realizing that discussion of the ten issues and application of appropriate legal and ethical standards is a time consuming task, the subcommittee sought reassurance from Santee Cooper's legal staff that the Board could continue to effectively function over the short-term without a full complement of eleven Directors. Staff was assured Board quorum requirements were tied to the number of members serving (not total number of seats). Further, the Board annually elects first and second vice-chairpersons to serve in lieu or in the absence of a chairperson. We have maintained ongoing contact with the Governor's staff as to the availability of interim appointment status for appointee Molnar[23] and to confirm Director DuBose's eligibility for continued service on the Board until either removal by the Governor or confirmation of his successor.

Through his staff, the Governor communicated his desire for his Chairman-designee, Mr. O.L. Thompson III, to have an opportunity to review a transcript of the subcommittee proceedings prior to his screening.[24] We believe that Mr. Thompson's commitment to review the record will serve Santee Cooper and him well. We have instructed staff to forward the hearing record and this report to Mr. Thompson. In light of the numerous alleged acts of malfeasance committed by some Board members that were reported to the subcommittee, this record and report should be required reading for all Board members.

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[21] Sarbanes-Oxley Act of 2002, PL 107-204, 116 Stat 745.

[22] The South Carolina General Assembly passed and enacted Act 137 of 2005, which added the requirement that appointees to the Santee Cooper board be screened by the State Regulation of Public Utilities Review Committee and must be found qualified by the Committee prior to Senate confirmation and service on the Board. The Act is effective as to those directors confirmed on or after the effective date of the Act. The Act provides that the Senate Judiciary Committee is to act in lieu of the Public Utilities Review Committee for any appointments made on or before July 1, 2005.

[23] On June 15, 2005, Governor Sanford communicated the interim appointment of Dr. Molnar.

[24] TR, May 31, 2005, pp. 3-4.

In addition to his appointment of Dr. Molnar, Mr. DuBose, and Mr. Thompson, the Governor may choose to fill vacancies for the Georgetown County Director's seat and the Fourth Congressional District seat. The term of Board member Patrick Allen expired on May 19, 2005.[25] Whether it is this subcommittee or the Public Utility Review Committee, we hope that our groundwork lays a foundation to expedite these future screenings.

Challenges Facing Santee Cooper Board

The subcommittee feels very strongly that these appointees' qualifications should be considered like those of any job applicant. While "Can they get the job done?" is the bottom line question, the first question to ask is: "What exactly is the job?"

Responsibilities of Santee Cooper Directors are generally set out in S.C. Code Ann. § 58-31-10 *et. seq.* In Act 137 of 2005, the General Assembly requires Directors to discharge their duties in good faith, with requisite care, and in a manner the Director reasonably believes to be in the best interests of Santee Cooper.[26] The "best interests" of Santee Cooper are a balancing of three factors[27] very similar to those factors applied to private energy utilities under Act 175 of 2004 (Public Service Commission Reform).[28]

What is not expressed in the law are those immediate challenges faced by Santee Cooper. Many of these challenges are reflected in the ten issues reviewed by the Committee. We also understand that our listing of these issues and the related challenges are certainly not exhaustive, and reasonable people may differ as to their priority. However, we conclude that it is <u>not</u> reasonable to view current Board disagreement over these issues and how that disagreement has been manifested as anything less than an obstacle to Board success. Beyond impeding Board success, these issues and the Board's methods of dealing with them have directed countless hours of employee time and productivity away from the financial bottom line of Santee Cooper. It is a tribute to the energy and ability of Santee Cooper's workforce that the company has continued to excel despite these distractions.

1. History of Santee Cooper Valuation Studies and the May 5, 2005 Credit Suisse/First Boston Study.[29]

<u>Background</u>

Speculation as to the scope and purpose of a study of Santee Cooper's "value" has spread through the media and public for nearly one year. In April 2005, Kyle Stock of the <u>Post and Courier</u> wrote two comprehensive articles about a pending valuation study and focused in part on the controversy concerning whether the study was a precursor to privatization of the

[25] As with Mr. DuBose, Mr. Allen may continue to serve on the Board until either removed by the Governor for cause or until confirmation and qualification of his successor. See S.C. Code Ann. § 58-31-20.
[26] See S.C. Code Ann. § 58-31-55.
[27] See S.C. Code Ann. §§ 58-31-55(A)(3)(a)-(c).
[28] See S.C. Code Ann. §§ 58-4-10(B)(1)-(3).
[29] TR, May 17, 2005, pp. 66-125; TR, May 18, 2005, pp. 4-11; TR, May 19, 2005, pp. 5-47, Ex. #3, Ex. #4, Ex. #5, Ex. #6, Ex. #7, Ex. #8, Ex. #9, Ex. #10, Ex. #11, Ex. #12, Ex. #17, Ex. #22, and Ex. #23.

utility.[30] Based upon responses to FOIA requests directed to Santee Cooper and the Governor's office, these articles tracked the genesis of the valuation study to 2003. Subcommittee staff sought and obtained from Santee Cooper and the Governor's office those documents made available to Mr. Stock under FOIA. This documentation established a basic framework for the balance of staff research on this issue.

Chronology

In October 2003, Credit Suisse/First Boston (First Boston) prepared a report, "Utility IPO Considerations" (later referenced by First Boston as an "overview analysis"). This October 2003 report restated First Boston's understanding that "the State of South Carolina was seeking to monetize its investment in Santee Cooper." Monetization alternatives identified were either an IPO (initial public offering) or trade sale. Within the report, First Boston provided "For Discussion Purposes Only" estimates of an implied equity value ranging between $1.3 and $1.7 billion dollars. Regulatory dynamics identified included "how much will rates need to be increased?" While the report included the Santee Cooper logo on each page, the company did not participate in gathering information for the 2003 report. In fact, the utility was made aware of the 2003 report by a third party.

Santee Cooper management, with the assistance of "independent experts," prepared a November 2003 report which reviewed and commented upon the difficulty of achieving an attractive valuation for the company (presumably through an IPO or trade sale) because of:

(1) the additional costs a private company would incur in managing essentially the same utility business;

(2) the need to raise customer rates by at least 30% if the State wished to clear $1.3 billion dollars (First Boston's floor for implied equity value); and

(3) the significant transactional costs associated with the conversion of the public power company to private (presumably IOU) status.

On September 20, 2004, emails were directed from Marshall Evans, an employee of the Governor's office, to investment bankers Morgan Stanley, Lazard Freres & Co., J.P. Morgan, and First Boston. The emails from Evans included a "request for proposals" for advisory services on the potential privatization of Santee Cooper. Specifics included that the successful applicant would work with the Governor's office to refine proposals; set a deadline of noon, September 24, 2004, for receipt of proposals; and scheduled in-person presentations for the time period between September 27, 2004, and October 22, 2004. Two references are made within the email to the study being "confidential."[31] Responses were received and the vetting process was completed. In an email to Lonnie Carter, President and CEO, on November 4, 2004, Board member Keith Munson identified fellow Board members Green and Coen and himself as those

[30] Ex. #23. The two articles by Mr. Stock are: "Sanford Weighed Utility Privatization," published April 15, 2005, and "Sanford Criticized on Utility, " published April 20, 2005.

[31] Email from Marshall Evans to investment bankers of September 20, 2004: "We would like this confidential study to be conducted in as timely a manner as possible." "Please treat this matter as strictly confidential."

members "vett[ing] the advisors who were interested in this project." There is no record of Santee Cooper Board action denominating this group to act on behalf of the Board. During this time period [Fall 2004], these three members constituted a quorum of the Executive-Corporate Planning Committee. If they met as such Committee, notice under FOIA was not given.[32]

It appears that the proposal for First Boston's services was first discussed with the entire Board during a closed-door session at its October 28, 2004 meeting. No records were made of the discussions or Board decisions to authorize payment of the $100,000 fee (and up to $50,000 in expenses) by Santee Cooper or to set controls on Board/employee interface with First Boston. It appears that a subject of discussion may have been the need for the study to be independent and "not subject to the oft cited criticism that it achieved a pre-determined result suggested by the company."[33]

Lonnie Carter executed an agreement authorizing completion of the study on November 19, 2004. Within the agreement, Santee Cooper agreed to fund but not direct the analysis. Payment of First Boston's invoice of $100,000 was authorized by Mr. Carter on December 14, 2004.

A due diligence process (between First Boston and Santee Cooper staff) began in November 2004. The company's executive management team and First Boston representatives met to discuss the study on Monday, December 20, 2004. Additional data was supplied on various dates between December 20, 2004, and a follow-up meeting on February 7, 2005. No Board member appears to have been copied on any of the correspondence between First Boston and Santee Cooper staff. Additional data was forwarded after the February 7, 2005 meeting between First Boston and Santee Cooper staff. On February 15, 2005, Suzanne Ritter, Santee Cooper Executive Vice President for Corporate Planning and Bulk Power, requested some indication as to when a draft report would be available for staff comment prior to release. Laetitia Dowd, of First Boston, agreed to coordinate this opportunity for comments. On February 24, 2005, Ms. Ritter forwarded the unaudited 2004 Cash Flow Statement indicating that she "believe(d) that [it was] the last piece of information [Santee Cooper was] getting for you." As with all staff correspondence to First Boston and reply correspondence from First Boston since formalization of the agreement on November 19, 2004, no Board member was copied.

On March 22, 2005, Ms. Ritter inquired as to the status of the study and the planned opportunity for staff review and comment. First Boston did not reply to this inquiry or related telephone inquiries. At its April 22, 2005 meeting, the Board was advised by Mr. Munson that the valuation report was ready and a presentation could be given by First Boston to the Board on May 5, 2005.

On May 5, 2005, First Boston presented its report. Within the executive summary, First Boston stated it considered the report to be "comprehensive financial analyses regarding Santee Cooper . . . using various valuation and other methodologies and [it was to] provide a view as to possible strategies to enhance the company's value <u>under its existing structure</u> or any viable alternatives." (emphasis supplied).

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[32] See S.C. Code Ann. § 30-4-80.

[33] TR, May 17, 2005, pg. 79, Ex. #3. Email from Keith Munson to Lonnie Carter, November 4, 2004.

The report was covered by a legend as requested by company executives indicating that the report was not reviewed or verified by Santee Cooper. Within the bound report was a six (6) page "History and Analysis of Santee Cooper" prepared by Mr. Munson. Mr. Munson was recognized as chairman of the Company's Legal Affairs Committee and an attorney with Womble, Carlyle, Sandridge and Rice. Within its disclaimer, the company noted that the foreword did not represent the opinion of Santee Cooper, its Board, or Management.

Mr. Munson's foreword, while offering a brief history of Santee Cooper, concluded that:

(1) the evolution of Santee Cooper's current mission, sale of "marginally cheaper electricity to residents along the coast, electricity wholesalers and existing industry . . . may not have been the result of a deliberative public policy process;"

(2) a deliberative public policy discussion should occur on the appropriate utilization of the state's equity in Santee Cooper;

(3) the amount of Santee Cooper's annual payments to the State may no longer support the S.C. Supreme Court's 1934 holding in Clark v. Santee Cooper (upholding such payments in lieu of taxes); and

(4) the single largest customer of Santee Cooper (Central Electric Cooperative and its distribution cooperatives) excessively marked up the price of power sold.

Within its executive summary, First Boston did not identify any Board member as a source of data or information impacting its financial analysis. Specifically, the executive summary noted that the "analyses [were] based on confidential financial and other information provided by the management of Santee Cooper . . . ." (emphasis supplied).

Prior to our first hearing on May 17, 2005, subcommittee staff inquired of First Boston as to: (1) who was the client (for purposes of contact/control) in this matter, and (2) whether any Board member had communicated with First Boston after the agreement was formalized on November 19, 2004, but prior to release on May 5, 2005. First Boston chose not to respond to several telephone requests and written requests by both staff and executives of Santee Cooper until late in the day of May 17, 2005.

On May 11, 2005, Mr. Munson provided James Brogdon, Esquire, General Counsel at Santee Cooper, an account of his involvement in the study through (1) preparation of the foreword as an "informal connection" between First Boston and Santee Cooper, and (2) his being the occasional coordinator of the transfer of information between First Boston and Santee Cooper. Mr. Brogdon forwarded the account to subcommittee staff. Within this account, Mr. Munson noted that it was his intention to give First Boston background information to give their report historical context, especially in light of Act 137 of 2005. Apparently, and in Mr. Munson's view, by default, he provided guidance as to "when to release the report, format, etc." He believed that First Boston considered him to "be the client representative on these matters." In response to staff's request for assistance in obtaining First Boston's records as to Board

member contacts and correspondence, Mr. Munson stated that he did "not believe that [he could] effectively intercede."[34]

In its May 17, 2005 disclosure, First Boston produced approximately eighty pages of correspondence between Mr. Munson and First Boston employees. In its correspondence covering the disclosure, First Boston notes that the documents provided are limited to those available without resort to email back-up tapes or its email archival system. The documents provided clearly show that Mr. Munson was engaged in managing the development and production of the valuation study. In a process parallel to and, by all accounts of staff and other Board members, unknown to anyone else at Santee Cooper, Mr. Munson vetted First Boston's research and conclusions,[35] offered legal and tax policy advice outside of the normal channels of either the General Counsel or CFO,[36] and requested First Boston to change the character of the report from one on privatization to one focusing either on "demutualization" or on "assessing the ways to get value to the State by Santee Cooper restructuring."[37] Throughout his commentary, Mr. Munson drove First Boston to incorporate an ever-changing politically driven message: (1) electric cooperatives unfairly benefit from Santee Cooper's low rates; (2) this study is not a privatization study, it is a how to get more value out of Santee Cooper study; and (3) Santee Cooper's original mission is no longer sound public policy. Mr. Munson incorporates many of these same arguments into a May 17, 2005 guest editorial in the Greenville News.[38] While the newspaper editorial is highly inappropriate under generally accepted standards of director duties of care and loyalty, it does have the advantage of not having cost the ratepayers of Santee Cooper $100,000.00. In effect, Mr. Munson's direction of the First Boston study transmuted what was to be an empirical analysis into little more than an expensive guest editorial opportunity for Mr. Munson to advance a political agenda.

Analysis

The subcommittee finds that the development of plans for the study and the "RFP" for the study were done outside normal Board operations and not in compliance with the FOIA. The Board's decision to act in secret at its October 28, 2004 meeting in approving the study to be conducted by First Boston and paid for by Santee Cooper resulted in there being no record established as to delineation of a "chain of communication" between First Boston and the Board. Mr. Munson inappropriately stepped into this vacuum and hijacked the process so as to produce his version of a study. Mr. Munson's actions as a Board member were reckless and unprofessional. The Board's failure to know about these actions and to countermand them is inexcusable.

[34]Email from Keith Munson to James E. Brogdon, Jr., May 11, 2005, Ex. #9; TR. p. 113 (May 17, 2005).
[35] Email of January 10, 2005 (Adam Davies to Keith Munson and Laetitia Dowd); February 3, 2005 (Dowd to Munson and Davies); April 4, 2005 (Davies to Munson); April 5, 2005 (Munson to Davies); April 20, 2005 (Munson to Davies and Mary Beth Mandanas); (multiple), May 3, 2005 (Mandanas to Burstein and Kozlowski). Exhibit 22, TR p. 5 (5/19/05).
[36] Ex. #24. Email of February 24, 2005.
[37] Email of April 5, 2005, from Keith Munson to Adam Davies.
[38] Ex. #4. Munson, Keith D. "Legislature's Handling Hurts Santee Cooper's Standing." The Greenville News, May 17, 2005 (Page 5A).

First Boston's refusal to this date to identify its client and Santee Cooper's steadfast disavowal of its being the client mirrors the murky origins of the First Boston report. Press accounts have labeled the study as alternately being Graham Edwards' or Governor Sanford's idea. John Rainey, in his testimony, claimed responsibility for telling the Governor that he [the Governor] would not believe any study unless it was his [the Governor's] own. The Governor's staff's insistence, in the September 20, 2004 series of emailed requests for proposals, on strict confidentiality, further begs the question as to who was in the "back room" as the concept and design of this study were developed. It is likely Mr. Munson, in his February 24, 2005 email to Mary Beth Mandanas at First Boston, who most accurately identifies the client responsible for the study as "the crowd you [First Boston] met with in Columbia and a couple others) . . ."[39] It's a shame the "crowd" did not leave a forwarding address so as to receive First Boston's invoices for $100,000 in fees and $22,573.51 in expenses.

When presented with a hypothetical scenario similar to Mr. Munson's independent involvement with the study, Jim Gilreath testified that similar director actions "just [didn't] happen in the real world. Not in the . . . corporate world I've been involved with."[40] He recognized the need for investment bankers in the context of a corporate merger or sale in order to receive independent advice.[41] In response to Senator Elliott's questions about how he, as a board member, would deal with a rogue member, Gilreath answered: "I think the first thing . . ., we would hire us a darned good lawyer . . . . We would probably ask him to resign. If he would not resign, then we'd have to see what was cause for removing him."[42]

Our concerns over Mr. Munson' rogue status and actions are apparently also held by at least one former Santee Cooper Board member appointed by Governor Sanford. In a May 31, 2005 published interview with the *Georgetown Times*, Carl Falk[43] is quoted as saying:

(1) "We received a very light-weight report for that amount of money."

(2) "It [the study] was not a sanctioned board activity."

(3) I accepted at the time denials by board members and the governor that it was not being done for the privatization of Santee Cooper, but more as a look at its performance. But, when you read the report, it was obvious that it was initiated with the intent of selling Santee Cooper."

(4) "I felt misled or betrayed once the report came out."

[39] TR, May 17, 2005, p. 79, Ex #3. Email from Keith Munson to Mary Beth Mandanas, February 24, 2005.
[40] TR, May 19, 2005, p. 27.
[41] TR, May 17, 2005, p. 47.
[42] TR, May 17, 2005, p. 56.
[43] Based on Mr. Falk's preliminary testimony, our subcommittee agreed that we would find Mr. Falk qualified to be appointed to the Santee Cooper board. Because his nomination had been put on hold by the Governor at the time of the vote, the subcommittee chairman sent a letter to the Senate Judiciary Committee Chairman expressing the subcommittee's approval of Falk and asking Senator McConnell to communicate the approval to the Governor. Senator McConnell did so in a letter to the Governor dated May 19, 2005. The Governor nevertheless chose to withdraw Falk's appointment on May 23, 2005.

(5) "Frankly, after reading the report, the governor had put Santee Cooper through unnecessary turmoil."

(6) "The report and its findings are almost worthless."[44]

At his brief screening on May 17, 2005, Mr. Falk testified that some Board members, including himself, were "caught off guard" about receiving the report.[45]

In assessing the damage to Santee Cooper which might occur because of the study, and Mr. Munson's actions, the subcommittee sought the perspective of John Rainey. Mr. Rainey testified:

(1) "We've had studies over the years. I don't know how many studies . . . and every study that comes up shows that you're going to have to increase rates dramatically if Santee Cooper's structure is changed, and you're talking about privatization."[46]

(2) "This is just not the way you're supposed to conduct business."

(3) "There's a bright line between setting policy for management and the direction of the company and overseeing management and getting into the operations of the company. You don't cross that bright line or you'll wreck the company, any company."[47]

Mr. Munson's resignation from the Board on May 25, 2005, obviates the need to comment further on his service as a Board member. We trust all current and future Board members will bear in mind Mr. Falk's and Mr. Rainey's comments before they consider breaching their duty of loyalty to the Company in order to pursue an agenda based on politics or some other form of self-interest.

2. Director Involvement in Vendor's Solicitation to Sell Coal to Santee Cooper[48]

A former employee of Santee Cooper informed subcommittee staff that after Santee Cooper had rejected an offer from Drummond Coal Inc. (Drummond), at least one director met with representatives of Drummond and Maybank Shipping Company (Maybank) concerning the purchase and shipment of coal from Drummond's Colombia, South America mines. The former employee believed that directors were inappropriately becoming involved with day-to-day management activities and areas where they lacked expertise and where they should not be involved. Staff requested any emails, correspondence, and memoranda that Santee Cooper may have in its possession regarding a meeting with Drummond and Maybank. The only document regarding the meeting that staff was able to locate was a memorandum authored by Pat Runey,

[44] Ex. #38. Georgetown Times, May 31, 2005.
[45] TR, May 17, 2005, p. 178.
[46] TR, May 18, 2005, pp. 87-88.
[47] TR, May 18, 2005, p. 110.
[48] TR, May 17, 2005, pp. 126-143, Ex. #13, Ex. #14, and Ex. #15.

Santee Cooper's Director of Fuel Planning and Supply.[49] Except as otherwise noted, the facts and chronology below are taken from that memorandum.

Maybank was considering a new operation on Cooper River to receive foreign coal. In order to be successful, it needed to handle a fairly large volume of coal. Drummond is a major importer of foreign coal and owns mining operations in Colombia, South America. In November 2003, Santee Cooper tested 30,000 pounds of Drummond's Colombia coal. Test results showed a low BTU compared to the typical coal purchased by Santee Cooper. Drummond thought that the coal could help with a reduction to NOx emissions, but that did not prove the case with the test. At some point thereafter, Drummond wanted a retest of 60,000 pounds with his people present. Santee Cooper was receptive to another test; however, Drummond did not submit a new proposal for the retest prior to February 6, 2004.

At some point after the November test of Drummond's coal, a representative of Maybank contacted Director Richard Coen and requested a meeting.[50] A meeting to discuss transporting and purchasing foreign coal was held February 6, 2004, at "Sewee, S.C.," with Maybank and Drummond representatives; Bill McCall, Santee Cooper's Executive Vice President and Chief Operating Officer; Pat Runey, Santee Cooper Director of Fuel Procurement and Supply; and Directors Richard Coen and Guerry Green. Drummond indicated at the meeting that it might have some coal later in 2004 for additional testing. Santee Cooper stated that it was ready to retest the coal and suggested that Drummond and Maybank Shipping consider the transportation of both imported coals and petcoke, as those two products might produce the volume Maybank needed to run its operation. Drummond was invited to provide a proposal for shipping coal for testing purposes. After the meeting, Mr. McCall pointed out to the two directors that Drummond had recently offered coal for $2.65 per ton more than was the price of the lowest domestic coal. It also was pointed out to them that imported coal does not qualify for synfuel tax credits and that imported coals have generally not been competitive with domestic coal.

On February 20, 2004, Pat Runey met with a Drummond representative who indicated that Drummond would not have enough coal to retest in 2004. On March 8, 2004, Jack Maybank called Pat Runey and indicated that Drummond would like to provide an offer to supply coal in 2005. On March 23, 2004, Santee Cooper received a spot coal proposal from Drummond for 2005 and 2006. The offer exceeded the spot market price by approximately $9.00/ton and was valid for only six days. Santee Cooper did not accept the offer but agreed to do a retest in 2005.

Santee Cooper has an Executive Fuels Committee, an in-house committee comprised of executive management personnel.[51] The committee receives reports from the Director of Fuel Planning & Supply regarding all aspects of fuel procurement and reviews and recommendations from Santee Cooper's Fuel Planning & Supply Division. This committee was created in the

[49] Ex. #13. Patrick C. Runey, Memo to File, April 16, 2004, Subject: Meeting on February 6, 2004, with Drummond Coal, Maybank Shipping, and Santee Cooper, to discuss the transportation of imported coal.
[50] TR, May 17, 2005, pp. 129-133. Director Coen acknowledged in a message left on the telephone of Mike Couick, Chief Counsel to the Senate Judiciary Committee, on May 5, 2005, that he had been contacted by Maybank and he in turn contacted Santee Cooper and another director, Guerry Green, to arrange a meeting.
[51] Staff interview with John S. West, former general counsel of Santee Cooper, on April 29, 2005, and inter-office memoranda.

early 1990s after bribery allegations were brought against a Santee Cooper employee and a Kentucky coal company president regarding the procurement of coal.

The procurement and delivery of fuel is a complex matter. There are many considerations that go into the purchase of coal. For example, in South Carolina Electric & Gas Company's (SCE&G) recent fuel case, Gerhard Haimberger, the General Manager-Fuel Procurement and Asset Management described SCE&G's strategy for fuel procurement:

> Fuel Procurement must look for an optimization between adequate supplies of acceptable quality at reasonable purchase prices with the ultimate value of the delivered fuel (coal or oil) determined by the actual measured heat rate efficiency in the operation of our generating plants…. SCE&G strives to use a variety of pricing mechanisms among coal contracts to mitigate or normalize the effects on prices created by changes in market conditions and indexes. This strategy is accomplished by staying abreast of and being knowledgeable about dynamic markets, balancing adequate inventories against long-term contract supplies, making reasonable and supportive spot market purchases and using variable quantity options. In addition to strategically managing current assets, SCE&G participates in several trade organizations, subscribes to a number of industry publications, accesses private and government forecasting and database sources, and maintains contact with other coal consumers, producers, brokers and coal traders. These information sources are essential to staying current with developing trends, knowing about fundamental changes taking place in the industry, and receiving timely and key marketing data and information. The combined information flow is integral in our ongoing analysis of current or prospective coal costs and market comparability.[52]

"A board's function is not to actually manage, but to ensure that the corporation is effectively managed by monitoring the performance of the CEO and senior officers."[53] Even if Directors Coen and Green had the expertise to participate in fuel procurement decisions, it is not the responsibility of a director to engage in the day-to-day activities of Santee Cooper. As stated by Mr. Gilreath, "stuff like that ought not be going on with Board members."[54] The subcommittee believes Directors Coen and Green inappropriately inserted themselves into the operations of Santee Cooper that are reserved to management (the Executive Fuels Committee) and Santee Cooper fuel procurement personnel.

[52] In the Matter of South Carolina Electric & Gas Company, Docket No. 2005-2-E, Pre-filed Testimony of Gerhard Haimberger, March 2, 2005, pp. 4-5.
[53] Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Some Thoughts for Boards of Directors in 2005*, 4 (2005).
[54] TR. May 17, 2005, p. 28.

3. Board Member Communication with Bond Rating Agencies[55]

Background

Santee Cooper finances approximately $3.0 billion of its corporate debt through Revenue and Revenue obligation bonds. The cost of financing this debt is heavily impacted by ratings given by the three major bond rating agencies - Moody's, Standard and Poor's (S&P), and Fitch.

Historically, Santee Cooper's ratings have been both favorable and stable. Until December 2004, all three rating agencies continued a nearly fifteen-year trend of elevating and then holding the Company's rating to levels [AA2 (Moody's), AA- (S&P), and AA (Fitch)] granted only a small handful (less than 20%) of public power companies. In December 2004, and April 2005, Fitch and S&P, respectively, changed the "outlook" on their ratings to "negative."[56] While this action did not result in a downgrade of the company's bond rating, it gave notice of the agencies' concerns over certain matters.

Allegations of Inappropriate Contact Investigated

Through review of Board member emails, the subcommittee was made aware that one or more members of the Santee Cooper Board had attempted to influence a bond rating agency, S&P, to lower its outlook or rating of Santee Cooper's corporate debt in an effort to halt the General Assembly enactment of S. 573 (now Act 137 of 2005). Allegedly, the Board members hoped that S&P would view S. 573 as endangering the Company's future financial stability. Communications between then Chairman Guerry Green and two S&P analysts were confirmed to subcommittee staff by both Green and the S&P analysts. Copies of the April 29, 2005 email correspondence was provided to the subcommittee by both the analysts and Green.

Within the email, Green volunteers that the input he offers to S&P supplements the standard and more formal briefing held between the analysts and Santee Cooper executives and Board members one week prior. He seeks to "amend" the formal meeting presentation by Santee Cooper to reflect:

(1) the bill (S. 573) is worse than described in the formal meeting;
(2) the bill would force a shift in allegiance to the customer;
(3) the legislation may force the Cooperatives to re-write their long-term contact with Santee Cooper; and
(4) he, as chairman, was "worried and concerned about [the] future financial security of Santee Cooper.

Green signs the email as Chairman of the Santee Cooper Board. He attaches an April 4, 2005 analysis by Director Munson to his email and invites input back from the analysts. Presumably, this input would take the form of a downgrade or change in outlook in Santee Cooper's rating.

[55] TR, May 18, 2005, pp. 11-37, Ex. #18 and Ex. #19.
[56] Fitch and S&P's analyses include a common focus on a lack of stability in tenure of Board members. Other concerns are addressed in each analysis. TR, May 18, 2005, pp. 15-16, Ex. #18 and Ex. #19.

Mr. Munson's analysis raises the specter of Board members resigning because of S. 573,[57] signals a surrender of control of the Company to customers; and predicts "this proposed legislation would probably cause Wall Street to panic." Green's communication to S&P predates the analysts' May 3, 2005 issuance of change in Santee Cooper's debt's outlook to "negative."

Analysis

James Gilreath and John Rainey, former Santee Cooper Board Chairman, offered testimony as to the impropriety of Green's independent contact with the analysts and his attempts to use the downgrade to influence legislative action. We, like them, find these actions to be almost surreal. Gilreath viewed such a scenario to be "a huge breach of fiduciary duty by the director . . . because [it] was certainly not in the interest of the Company."[58] John Rainey, in his testimony, often referred to inexplicable Board actions such as these as only taking place in "Oz." We see the contact and its intended purpose as akin to "juggling dynamite." Senator Mescher, former Chief Executive Officer at Santee Cooper, discouraged Board member participation in analysts' briefings during his tenure. He provided to the subcommittee his reasons for having employees attend instead.[59] Why put at risk the company's long-sought high bond rating? Why risk an increase in electric rates to all of Santee Cooper's customers in order to further a political agenda?

Fitch's December 2004 issuance of its negative outlook predated the introduction of S. 573 and was predicated on the recent phenomena of rapid Board member turnover at Santee Cooper. Chairman Green and Mr. Munson, in seeking to torpedo S. 573, only confirmed the probability that, without the assurance of full-term tenure and the duties of care and loyalty established by S. 573, the Board would continue to disintegrate in an "Oz" existence.

It would be naive to conclude that Board members Green and Munson were the only ones aware of Munson's April 4, 2005 analysis and Board member efforts to generate negative reactions to S. 573 from bond rating agencies. Correspondence reviewed by the subcommittee indicates that at least six members were aware of the analysis and a general call to make the inappropriate contact. While some of the members may need to be held accountable, the failure to provide leadership, and in fact the very problem of pursuing the contact, emanated from Board Chairman Green. It is particularly troubling to the subcommittee that the Chairman of the Board who should set the tone for the entire Board and who, above all, should be loyal to Santee Cooper and its customers and bondholders and have only the best interests of Santee Cooper at heart was the instigator of such reckless actions.

4. Board Actions Relating to the Sale of Surplus Property[60]

A former chairman and former Santee Cooper employee brought to subcommittee staff's attention a situation regarding the sale of property identified as surplus property in a resolution

[57] Mr. Munson resigned on May 25, 2005.
[58] Gilreath TR, May 17, 2005, pg. 29.
[59] TR, May 18, 2005, pp. 32-33.
[60] TR, May 18, 2005, pp. 37-74, Ex. #20.

adopted by Santee Cooper in December 2003.[61] To pursue this matter, staff requested from Santee Cooper all emails and other correspondence regarding the sale of Santee Cooper's surplus properties. Staff also reviewed minutes of meetings of the Board and Property Committee. Although there was some concern expressed about the prudency of sale of the Litchfield property, in particular by former Board member Joe Young at one of the "open mike" hearings[62], the subcommittee's view is that it was not the subcommittee's responsibility to pass judgment on the validity or appropriateness of the sale of property. The subcommittee focused on the propriety of the directors' actions with respect to the sale of property.

Until September 26, 2004, when Santee Cooper wanted to sell property, it would offer tracts on a competitive sealed bid basis, with a minimum bid price established by appraisal plus selling costs, in accordance with its Policy Position on Sale of Property entitled "Procedure for Sale of Disposition of Surplus Real Estate." At the Property Committee meeting held March 21, 2004, John West, general counsel for Santee Cooper, presented a land sale proposal for the Surplus Property Sales Program, which had been authorized by Board resolution. Mr. West explained that the tracts would be offered on a competitive sealed bid basis and distributed a sample bid information packet. The minutes reflect: "There was discussion regarding the selection process for appraisers and surveyors. No action was required by the Board." Staff did not find any document that would show an objection by any committee member to this form of sale.

Approximately four months later, during the lunch recess of the Board meeting on July 26, 2004, some directors were sitting with Lonnie Carter, President of Santee Cooper, and Mr. West, and they discussed the manner of the sale and asked Mr. Carter to hold off sending the bid packets.[63] There is no documentation, however, to indicate who or what was discussed during lunch since it not a formal meeting or discussion. If Directors DuBose, Green, and Coen participated, as subcommittee staff was informed, they would have constituted a quorum of the Property Committee, and if business regarding the sale of surplus properties had been conducted by the three as Property Committee members, the FOIA would have been violated since it requires that when a quorum of a public body convenes, the meeting must be open to the public with proper notice to the public.[64]

Bid packets were sent out that day by a Santee Cooper employee who had apparently not been informed of the informal request by the three directors.[65] At a special board meeting held August 2, 2004, the minutes reflect that there was discussion about communications between management and the board.[66] Also, at the Property Committee meeting held August 23, 2004, Directors raised questions regarding sale of surplus property. The minutes state, "Specific concerns were noted with regard to the parcel of land located at Litchfield Beach. Three

[61] This resolution approved the payment of $13 million to the State and identified certain properties that were surplus to Santee Cooper's future operating needs that the Board determined could be sold and the proceeds from the sale paid to the State as a one-time contribution.
[62] TR, May 18, 2005, pp. 61-62.
[63] This information came from an interview with a former board member.
[64] S.C. Code Ann. §§ 30-4-20, 30-4-60, and 30-4-80.
[65] See form letter dated July 26, 2004 from G. Denton Lindsay, Manager, Property Management Division, Santee Cooper.
[66] Minutes of August 2, 2004 Special Session of the Board of Directors of Santee Cooper.

Directors had requested an opportunity to review marketing materials before the properties went out for bid, but bid packages were mailed without the Directors' review."[67] The minutes also note that Directors want more aggressive marketing of properties and that Director Coen recommended that a broker be hired to market the Litchfield parcel and to review Santee Cooper's entire property portfolio. West told the Board that the ultimate question was whether to amend existing policy.

At the August 23, 2004 meeting, the Property Committee voted unanimously to authorize management to: (1) solicit proposals to identify potential brokerage firms for all surplus property; (2) receive sealed bids for Litchfield parcel; (3) report on both processes at September Property Committee meeting; and (4) provide recommendations regarding amendment to policy for sale of surplus property to include specific circumstances in which a broker should be enlisted to market property rather than solicitation through sealed bids. The Board also voted for this authorization at its August 23, 2004 meeting. This is the first formal attempt to amend the procedure for the sale of land and give the management guidance how to proceed; however, a new policy is not yet adopted.

On August 25, 2004, Mr. Carter sent the directors a draft RFP for brokerage and real estate advisory services and a preliminary list of fifty-three recipients of the RFP, requesting their additions or deletions to the documents. On September 2, 2004, President Lonnie Carter informed directors that Santee Cooper had received six bids on three of the four properties listed in Phase 1 of the Property Sales Program. Mr. Carter informed the directors that the letter was going out that day to brokers.

This began a flurry of emails concerning whether to reject the bids. Some directors began emailing each other and management complaining about the bid packets being mailed after three directors had requested an opportunity to review them. Director Coen, in particular, was troubled by Santee Cooper's handling of the surplus property sales. Director Coen emailed to directors and management information on Broad Street Advisors, a New York firm that provides real estate banking and advisory services. Broad Street had prepared an offering package for Mr. Coen's condominium development project on Mt. Pleasant. Director Coen believed that Santee Cooper had left "several million on the table" with respect to the surplus property sales. It is unclear what the relationship is with respect to Director Coen and Broad Street Advisors. It is interesting that Broad Street Advisors was the only out-of-state firm that was sent the RFP and Director Coen was concerned about the large number of firms that received the RFP. After The Post and Courier began inquiring into Broad Street's role, Broad Street sent a letter to Santee Cooper withdrawing its name from consideration.[68]

Some Directors expressed more than mere disappointment at management's sending the bid packets when they had been requested to hold off sending them. Director Green accused management of "jump[ing] the gun" and getting them "into a mess" and wanted a letter sent to the bidders explaining that management acted without the authority or knowledge of the Board and was withdrawing the bid process. Director Green also lashed out at Chairman Edwards, questioning his leadership. Lonnie Carter apologized repeatedly about the bid packets being

[67] Minutes of August 23, 2004 meeting of the Property Committee of the Board of Directors of Santee Cooper.
[68] "Utility seeks broker for land sales," The Post and Courier, October 28, 2004.

mailed when several directors asked that they be held until they could review them. He contacted Director DuBose, the Property Committee chairman, and offered to send a letter withdrawing the request for bids, but they decided to wait until the Property Committee met.

Some Directors discussed in emails whether or not they should reject all bids. Director Coen stated he would vote to reject all bids and expressed the desire for "an outside third party perspective that has the credentials and track record to dispose of a real estate portfolio of this size and complexity."

On September 26, 2004, the Property Committee voted to reject all sealed bids for Phase 1 surplus property and recommended approval of an amended policy. Also on that date, the Board voted unanimously to reject bids for Phase 1 surplus property. The Board also voted to approve the amended policy for sale or disposition of surplus property, which provides that the Property Committee may direct the Property Management Division to engage the services of a real estate brokerage and/or consulting professional to assist in the disposition of land in certain circumstances.

Based on our review of the evidence and information presented, the subcommittee finds that there is a lack of understanding on the part of some directors as to their role, resulting in micro-management and inserting themselves into the day-to-day activities of management. The Board circumvented the FOIA in two ways: (1) by making a decision regarding public business and surplus property sales, without notice to the public and the convening of a public meeting, and (2) by discussing the surplus property sales by way of electronic communications.[69] We are also concerned about the lack of courtesy and respect shown by some Directors toward management and each other. Santee Cooper employees had acted within the guidelines set forth in existing policy regarding the sale of real estate, as there had been no formal action by the Property Committee to change policy at the time the employee sent out the bid packets to potential bidders. Directors have authority to amend policy; however, once policy is established, management and employees should be able to do their jobs within the parameters established by the policy and not worry about whether a director or a minority of directors have sought informal changes to policy. Despite all of the turmoil created, the subcommittee is not certain whether the Board maximized the value of the property. A bidder initially submitted a bid in the amount of $5,375,000 for the Litchfield property. After the Property Committee rejected the bids, the same bidder appealed to the Board at its October meeting and increased his bid by only $200,000 to $5,575,000. The Board accepted the bid, without having engaged the services of a real estate broker or consulting professional.

5. The Sufficiency of Board Oversight of Executive Compensation[70]

Within their respective May 1 and May 4, 2005 editorials in the The Post and Courier, Governor Sanford and Senator McConnell raised the issue of whether departing (retiring) executives of Santee Cooper were excessively compensated. Within his editorial, Governor Sanford offered:

[69] S.C. Code Ann. §§ 30-4-15, 30-4-20, and 30-4-70.
[70] TR, May 24, 2005, pp. 64-105, Ex. #31.

> First, there will obviously continue to be critics of our reforms, but it's worth noting that some of the loudest critics receive the most from Santee Cooper, which presently pays over $1 million a year in retirement for former management. In fact, one individual will receive $400,000 a year for the rest of his life -- which in present value terms amounts to a $20 million retirement package. When I see those numbers, I question whether certain efforts to maintain the status quo are really about the ratepayer.

Senator McConnell, in his editorial, charged this subcommittee to review this issue:

> As to the specific allegations he [Governor Sanford] makes regarding corporate hospitality expense, inappropriate rebates to the Electric Cooperatives, and excessive executive compensation, I am all for sunlight as a disinfectant. If there are improprieties, they should be investigated and corrected. Violations of law by Board members or by employees under their supervision should be the subject of the upcoming legislative screening of his four Board appointees. Everything possible should be done to ensure that Santee Cooper is not run like Enron.

In addition to the Governor's and Senator McConnell's comments, the subcommittee also considered allegations received from constituents that programs of "golden handcuffs" or "golden parachutes" existed at Santee Cooper.

Staff compiled for the Santee Cooper subcommittee data in two areas: (1) compensation paid to executives while employed by Santee Cooper, and (2) compensation and benefits paid to executives upon departure from employment with Santee Cooper. Staff also developed comparative salary and benefits data from other utility companies.

Santee Cooper's Board has historically relied upon Towers Perrin, a nationally recognized expert in compensation and executive compensation design, to provide the Board annual reports comparing Santee Cooper executives' compensation with the compensation paid to similar executives serving other energy utilities in this geographic region. In response to these studies, Santee Cooper has designed compensation plans for its executives which have three primary components:

(1) Base salaries for each covered position not exceeding the 25th percentile (lowest quarter) among the utility peer groups selected by Towers Perrin;

(2) An annual incentive award payable to certain key executives[71] based upon the utility performance as measured by (a) annual cost/kWh sold relative to a peer

[71] The annual incentive plan covers six types of positions within Santee Cooper: Chief Executive Officer, Executive Vice President, Chief Operating Officer, Chief Financial Officer, General Counsel, and Senior Vice President. The first three positions are eligible for awards up to 25% of base salary. All other persons may receive up to 20% of base salary.

group three-year average (efficiency), and (b) overall customer satisfaction (independent survey must demonstrate satisfaction rating of 95% or greater); and

(3) Retirement benefits which take two forms for executives. As state employees, these executives receive general state retirement benefits upon completion of the minimum required years of service applicable to all state employees. This retirement benefit is funded by roughly co-equal contributions by employer and employee. In addition to this "ordinary" state retirement, key executives[72] participate in a Supplemental Executive Retirement Plan (SERP) which is tied to a minimum number of years of employment at Santee Cooper and which benefit is derived from a combination of factors focusing on position within the Company and compensation. This SERP benefit, as established by Board policy, is ordinarily payable over a period of either fifteen or twenty years.[73]

The subcommittee finds the compensation program for executives to be sound corporate policy. We are convinced that the Board, in accepting Towers Perrin's recommendation, has exercised sound judgment. Santee Cooper, in seeking to attract qualified management with the requisite knowledge and skills to run a utility, competes head-on with other utilities, including those that are investor owned. The Board, since at least 1996, has sought to bridge the compensation gulf between investor-owned utility and Santee Cooper employee base salaries - sometimes a factor of three to one - by providing expanded retirement benefits (SERP) upon service to the company for a minimum number of years. This last compensation component, requiring a minimum tenure, is what has become known as the "golden handcuffs" as it levies a high economic opportunity cost on any employee who chooses to leave before his SERP vests.[74] The handcuffs have apparently worked as the tenure of key executives at Santee Cooper appears to be stable.

The subcommittee also reviewed Company records to determine if any prior Board had given special or extraordinary treatment to any departing executives. The subcommittee discovered two instances where departing executives received retirement compensation packages which fall outside the "norms" outlined above:

(1) William C. Mescher, a member of the Senate and of this subcommittee, served as President and CEO of Santee Cooper until his "retirement" in 1989. Senator Mescher's departure from Santee Cooper came as the Company began to confront what is commonly known as the "coal scandal." During the subcommittee hearings, staff painstakingly walked through each aspect of Senator Mescher's retirement package with particular focus on its being "for his lifetime" [not limited to twenty years as would be current Board policy]. Staff also focused on Senator Mescher's residence being on Santee Cooper property and its relationships to Santee Cooper's successful recruitment of Mescher from a large

[72] The 40 key executives identified by Santee Cooper as eligible for the program range from Chief Executive Officer to managers of the generating stations to Nuclear Coordinator.
[73] The President and CEO may receive twenty years of benefits. All others may receive fifteen years of benefits.
[74] TR, May 24, 2005, pp. 89-90.

Midwest utility.[75] Senator Mescher answered each of staff's questions. We believe that Senator Mescher's departing compensation package was largely based upon his refusal to yield to then-existing political pressures to sweep the "coal scandal" under the corporate rug. Instead, he challenged the Board to begin internal and criminal investigations. After choosing to terminate Senator Mescher, the Board found itself trying to remedy a rather awkward situation. We believe that Senator Mescher's lifetime, rather than twenty-year term of SERP benefits, was an attempt to "pour oil on the water" and restore calm at the company. We have established a record on this matter and would invite you and others to form your own judgment.[76]

(2) T. Graham Edwards left employment with Santee Cooper in 2000 after 23 years of service. Some sixteen months prior to his departure, the Board considered and adopted changes to his SERP benefits to allow for an annual benefit equal to sixty percent (rather than forty-five percent) of his highest annual salary and for a term of thirty years (rather than twenty years). The record (minutes of February 21, 1999 Board meeting) indicates unanimous Board approval. The minutes also reflect that these changes (and other benefits granted) were in recognition of his "leadership, and the outstanding competitive position Santee Cooper has obtained." Mr. Edwards cooperated fully with our staff in providing documentation of his benefits. As with Senator Mescher, this compensation decision was considered by the full Santee Cooper Board, documented in its minutes, and tied to a cognizable business purpose. Again, we have established a record for current and future boards and the public to consider and draw their own conclusions.

We were unable to find any retired employee receiving $400,000 or more in annual compensation. Our review of company records would indicate that Mr. Edwards received $155,674.22 in SERP compensation. As a twenty-eight-year state government retiree, he receives approximately $140,000 in general state retirement benefits. He would appear to be the highest compensated former Santee Cooper employee. We were unable to obtain a present value of $20 million for any retired executive's compensation package.

The subcommittee also reviewed general employee turnover rate at Santee Cooper. We found the turnover level to be low and stable over time.

6. Board Compliance with the Freedom of Information Act[77]

As a public body, Santee Cooper is subject to the guidelines of the FOIA.[78] Repeated violations of the FOIA during Santee Cooper Board meetings came to our attention while

[75] Senator Mescher and his wife built and purchased their home which is located on Santee Cooper property. The Meschers pay rent for the property and are obligated to sell the residence to Santee Cooper at fair market value at a future date fixed by written agreement of Santee Cooper and Senator Mescher.
[76] TR, May 24, 2005, pp. 82-97.
[77] TR, May 24, 2005, pp. 36-63, Ex. #30.
[78] S.C. Code Ann. § 30-4-20(a).

subcommittee staff investigated other issues. A thorough examination of the Board minutes revealed numerous times that the Board went into executive session, often without adequate explanation. By reviewing other memos, emails, and motions made upon coming out of executive sessions, staff deduced several of the topics discussed in these sessions closed to the public. Some of these topics are not within the enumerated exceptions to FOIA listed in the law.

The spirit and the purpose of FOIA is to ensure that public business is conducted in an open and public manner so that citizens are advised of the performance of public officials and of the decisions that are reached in a public activity and in the formulation of public policy.[79] FOIA requires that every meeting of all public bodies be open to the public, unless it is closed pursuant to the listed exceptions.[80] A meeting is defined as the convening of a quorum (a simple majority of the constituent membership of a public body), whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.[81] No chance meeting, social meeting, or electronic communication may be used to circumvent the spirit or the requirements of FOIA that public business be conducted in an open and public manner.[82]

Specific purposes that allow a public body to close a meeting to the public include: (1) discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee; (2) discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, and the receipt of legal advice where the legal advice relates to a pending or potential claim or other matters covered by the attorney-client privilege; (3) discussion regarding the development of security personnel or devices; (4) investigative proceedings regarding allegations of criminal misconduct; and (5) discussion of matters relating to the proposed location, expansion, or provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

Guidance as to how specific the "specific purpose" needs to be is given by a 1988 Attorney General's Opinion. "Merely stating that an executive session will be convened for the discussion of 'personnel matters' is not sufficient."[83] A "specific purpose" mandates that the public in attendance be specifically apprised of the nature of the discussions to be held in executive session.[84] "Personnel matters" is not sufficiently specific. Although not discussed within the opinion, similar inferences can be drawn as applied to "contractual matters" and "legal advice."

The Santee Cooper Board violated the FOIA provisions described above by: (1) failing to sufficiently describe the specific purpose behind going into executive session; (2) going into executive session for reasons not within the exceptions provided by law; and (3) conducting Board business through Emails and social meetings.

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[79] TR, May 24, 2005, page 37, lines 2-5. S.C. Code Ann. § 30-4-15.
[80] *Id.* at 37, lines 6-9. *See also* § 30-4-60.
[81] S.C. Code Ann. § 30-4-20 (d) and (e).
[82] S.C. Code Ann. § 30-4-70 (c)
[83] 1988 Op Atty Gen, No. 88-9, p 39.
[84] Id.

Between January 28, 2003, and April 1, 2005,[85] the Board of Directors met forty-one times, during which, the Board went into Executive Session eighteen times. The only purposes given for going into Executive Session were "personnel matters," "contractual matters," and "legal advice." During the same dates, the subcommittees met numerous times and also entered into Executive Session on many occasions. The meetings include:

- The Contributions Committee met a total of seven times and never entered Executive Session.
- The Public Relations Committee met five times, one of which was a joint meeting with the Finance Audit Committee. The Public Relations Committee entered Executive Session two times. Both reasons given were "contractual matters."
- The Executive Corporate Planning Committee met 20 times, during which they entered Executive Session 11 times: three times for "legal advice," six times for "contractual matters," and two times for "contractual matters and legal advice."
- The Finance-Audit Committee met 19 times, during which they entered Executive Session five times: two times for "personnel matters" and three times for "contractual matters."
- The Facilities Committee met four times. The Facilities Committee never entered Executive Session.
- The Human Resources Committee met 13 times, during which they entered Executive Session six times: five times for "personnel matters" and once for "contractual matters."
- The Legal Affairs Committee met eight times, during which they entered Executive Session seven times: all seven times were for "legal advice."
- The Property Committee met nine times, during which they entered Executive Session three times: all three times were for "contractual matters."

In each instance, whether it is the full Board or a subcommittee, a specific purpose was not given for entering Executive Session.

Because executive sessions are not on the public record, we cannot be sure whether each session properly fell within an authorized exception to the open meeting requirements. Many times, executive sessions entered into because of "personnel matters," "contractual matters," or "legal advice" were followed by adjournment, leaving us no clue as to what was discussed. Often times, executive sessions entered into in order to receive "legal advice" were followed by discussion of giving money to the State or discussion of Santee Cooper legislation.[86] If these topics were the ones discussed during the executive session, these purposes are not covered under a legitimate exception. An executive session properly entered into under the "legal advice" exception applies only "where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege." This is a narrow exception mainly confined to existing or potential claims by or against Santee Cooper.[87] From

[85] The following information was gathered by going through the minutes from every board meeting and subcommittee meeting between January 2003 and April 2005.
[86] *Id.* at March 23, 2005, and March 24, 2005.
[87] TR, May 24th, 2005, pg. 54, beginning at line 5.

what we were able to infer from surrounding discussions, rarely did the Board invoke the "legal advice" exception properly.[88]

Electronic communications and social meetings cannot circumvent the spirit of FOIA by preventing board business from taking place in public and not providing public notice of such "meetings." The mountain of emails sent between Board members and obtained by staff evidenced the consistent violation of this provision. Examples of such emails include discussion of the First Boston valuation report,[89] the procedure for surplus property sales,[90] the procedure for charitable contributions,[91] and the Gypsum plant negotiations.[92] An important violation occurred when three board members who sat on the Property Committee (constituting a quorum of such committee) had lunch with President Lonnie Carter and General Counsel John West.[93] Despite the procedure in place of sending out bid packets to potential buyers, these Board members instead instructed management not to send out bid packets because they were interested in obtaining a broker to sell the property in question.[94] Some Board members became outraged and blamed management when the appropriate people did not get the message and sent the bid packets out according to the current procedure.[95]

The evidence presented shows a "consistent, persistent violation of FOIA," as stated by Jay Bender, Esquire.[96] In addition to not sufficiently describing the "specific purpose" for entering into executive session, the Board often entered executive session for reasons not covered under the exception provision. Many times it appears the Board misused authorized exceptions to FOIA as a ruse to discuss sensitive or controversial matters. It is the opinion of Mr. Bender,[97] former Chairman John Rainey,[98] members of the subcommittee,[99] and even appointee Dial G. DuBose,[100] that the Santee Cooper Board could benefit greatly from a lesson on FOIA. Governor Sanford even recently issued a statement also agreeing that a FOIA lesson would be useful.

Motives of things done in secret are much more likely to be questioned than those things discussed in public. If the Board had complied with FOIA by conducting business in a public forum, the Board would not have been distracted from their larger duties owed to Santee Cooper and hence, many of the issues we discuss in this report could have been lessened or even avoided.

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[88] This may or may not be the case for "contractual matters" and "personnel matters;" however, violations, if any, were more difficult to glean under these exceptions, especially in light of the generic reasons given in lieu of the "specific purposes" required by law.
[89] Email from Keith Munson to various members of the Board, discussed TR, May 17, 2005, pg ____.
[90] Emails from directors and management, discussed TR, May 18, 2005, pp. 46-49 and 51-53.
[91] TR, May 24th, 2005, mentioned at page 107, line 12, and explained starting at page 120, line 11.
[92] TR, May 24, 2005, pp. 140-145.
[93] TR, May 24, 2005, pp. 57-58, lines 18-3.
[94] TR, May 18, 2005, pg. 41.
[95] TR, May 18, 2005, pg. 48; email from Green to Directors.
[96] TR, May 24, 2005, pg. 55, lines 5-6.
[97] *Id.* at pg. 62, lines 17-23.
[98] TR, _____.
[99] Specifically, Senator Elliot (TR, May 24, 2005, pg. 62, lines 13-16) and Senator Rankin (TR _____).
[100] TR, May 31, 2005, pg. 175, lines 3-5.

7. Board Actions Related to Gypsum Industry Recruitment[101]

Former employees of Santee Cooper mentioned to staff that staff might wish to review emails concerning Board involvement in the negotiation of a contract between Santee Cooper and a wallboard manufacturer. Staff reviewed emails, memoranda, and news articles.

> While the corporation laws literally say that the business of the corporation is to be managed by or under the direction of the board of directors, it is clear that the board's function is not to actually manage, but to ensure that the corporation is effectively managed by monitoring the performance of the CEO and senior officers. To meet its duty to monitor performance, the board and management together need to determine the information the board should receive. Here 'more is less.' The board should not be overloaded with information. It is not necessary that the board receive all the information that the CEO and senior management receive.

Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Some Thoughts for Boards of Directors in 2005*, 4 (2005).

Over the past five years, Santee Cooper was contacted off and on by wallboard manufacturers about Santee Cooper's gypsum byproduct, which it first began producing in 1999 as a byproduct of using scrubbing technology to reduce sulfur dioxide emissions at its coal-fired plants at Cross and Winyah plants. In 2003, Santee Cooper sent a request for bids to a number of wallboard manufacturers to sell the gypsum, but the bids were not acceptable to Santee Cooper.[102] Until 2004, the wallboard manufacturers were not offering to purchase the gypsum, but only to take it off Santee Cooper's hands, either for Santee Cooper to pay them to take it or to simply to remove it from Santee Cooper's property.

After Santee Cooper announced the permitting of Cross Units 3 and 4, Santee Cooper's Administrator of Combustion Products began hearing from wallboard manufacturers. Santee Cooper heard from American Gypsum in March 2004, and from U.S. Gypsum (USG) in May 2004.[103] Santee Cooper included the Department of Commerce in its process to locate a wallboard plant as early as mid-March, when a meeting was set up by Santee Cooper's Economic Development Department at the request of a consultant. Management of Santee Cooper presented information to the Directors about the negotiations with wallboard manufacturers. By early August 2004, USG had either been informed or believed its proposal had not been selected. Dan Salisbury, Director of Real Estate at USG, contacted Secretary of Commerce Bob Faith and copied Director Richard Coen, complaining about the negotiations between Santee Cooper and the wallboard companies. USG also contacted the Governor's office.

[101] TR, May 24, 2005, pp. 131.146, Ex. #33.
[102] Id.
[103] Id.

Directors Coen, Green, DuBose, and Davis expressed concern about the lack of information the directors had received about the gypsum negotiations.[104] Director Coen went so far as to order management not to sign a letter of intent with American Gypsum.[105] Director Coen believes the Board's function is to "manage" Santee Cooper.[106] Director Coen had little confidence in the ability of Santee Cooper to negotiate this contract with a wallboard manufacturer.[107] Director Davis expressed concern: "Negotiating power is one thing, but to negotiate the entry of an entire industry into the State is another 'ball game'. No offense, but I have serious questions about our ability or expertise to do this or make this decision alone." Director Green expressed his opinion that the Santee Cooper property division was "acting entirely independent of the Board."

This electronic flurry of emotion was the result of inappropriate contact by an unsuccessful bidder to an individual director who got other directors in an uproar about a decision with which, in the end, turned out to be a decision with which the directors were apparently quite comfortable. By inter-office communication dated September 24, 2004, Lonnie Carter confirmed his understanding that the Board authorized management to sign a letter of intent with American Gypsum. One can infer from the lack of communication by other directors that they were comfortable with the information given by management.

On April 4, 2005, Governor Sanford and officials with Santee Cooper and Georgetown County announced a major economic development initiative with American Gypsum Company to build a $125 million gypsum wallboard plant in Georgetown County. The plant will be built next to the Winyah Generating Station.

Based on our review of the evidence and information presented, the subcommittee finds that there is a lack of understanding on the part of some directors as to their role, resulting in micro-management and inserting themselves into the day-to-day activities of management. Additionally, it appears the Board circumvented the FOIA in two ways: (1) by apparently discussing the negotiations in executive session without stating the specific purpose for the private session; and (2) by electronic communications.[108] It further appears there is a lack of clear understanding as to how much information the Board should receive. A Board should

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[104] Emails from:
Richard Coen to the Chairman and Management, 8/11/04 12:55 p.m.
Guerry Green to Lonnie Carter, 8/11/04, 6:47 p.m.
Dial DuBose to Richard Coen and Lonnie Carter, 8/12/04, 2:21 p.m.: "Richard, I don't want you and Guerry to feel like you are alone in your concerns. I too am frustrated about the information we receive and more importantly the information we don't receive! Communication or the lack thereof is a problem I thought we put behind us. Thank you for raising these issues, the Board should be grateful for your vigilance. Thanks, Dial."
Clarence Davis to Richard Coen and Lonnie Carter, 8/15/04, 10:54 a.m.

[105] Email from Richard Coen to Lonnie Carter, 8/12/04, 6:41 p.m. "DO NOT SIGN THAT LETTER. To my knowledge the board has not authorized anyone to sign anything regarding this transaction."

[106] Email from Richard Coen to Chairman and management, 8/11/04 , 12:55 p.m. "We can not manage if we are not informed."

[107] Email from Richard to Lonnie Carter, copied to directors, 8/15/04, 10:11 a.m.: "I understand that you want to present the gypsum transaction to the full board and that is what should happen. . . . Management needs to concentrate on public power. These are board issues and we need a competent third party review for all our benefit. . . ."

[108] S.C. Code Ann. §§ 30-4-15 and 30-4-70.

ensure that a corporation is effectively managed by monitoring the performance of the CEO and senior officers.[109] Together the Board and management need to determine the information the Board should receive. The Board does not have to receive all the information the CEO and senior management receive. We also are concerned about the lack of courtesy and respect shown by some Directors toward management and other Directors. Collegiality is important. "A balkanized board is a dysfunctional board; a company's board works best when it works as a unified whole, without camps or factions and without internal divisions."[110] Finally, we are concerned about the potential harm created by outside influence on Board and management actions.

8. Board Oversight of Santee Cooper Charitable Giving and Corporate Sponsorships[111]

The curtailment and possible discontinuance of charitable contributions and corporate sponsorships were topics of conversation at the open mike hearings on Santee Cooper. It became evident that charitable contributions in particular had been the subject of much controversy among Board members, as evidenced by the amount of time devoted to the issue in Board and committee meetings, emails, and newspaper articles.[112] Two basic perspectives emerged: (1) the acknowledgement by some directors that charitable contributions benefited the community, sponsorships created opportunities for economic development, and both furthered Santee Cooper's corporate purposes; and (2) the belief that it was inappropriate for Santee Cooper to make charitable contributions or sponsor golf tournaments or other events.

It was not the responsibility of the subcommittee to decide whether Santee Cooper should continue its contributions and sponsorships; thus, we focused on the propriety of the directors actions with respect to its handling of these issues. The subcommittee finds that the directors circumvented the provisions of FOIA by utilizing electronic communications to discuss the issue of charitable contributions. We further find that some directors failed to consider the interests of Santee Cooper, its ratepayers, and the communities it serves in making decisions on contributions, either because of political influence by the Governor or their own personal beliefs.[113]

Background

Annually through its budgetary process, Santee Cooper approves an amount of money to distribute as charitable contributions, sponsorships, and membership fees. Contributions are grants of money that serve Santee Cooper's corporate purpose and the public purpose of improving the well-being of the communities Santee Cooper serves. Sponsorships are grants of money that serve Santee Cooper's corporate interests in that they further business connections

[109] Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Some Thoughts for Boards of Directors in 2005*, 4 (2005).
[110] Id.
[111] TR, May 24, 2005, pp. 107-131, Ex. #32.
[112] Articles from The Post and Courier: "Sanford Takes Utility to the Woodshed," 10/4/04; "Utility to Cut Donations by 28%," 11/23/04, and "Sanford's belt-tightening pressures Santee Cooper," 8/4/03.
[113] Director DuBose testified that he felt uncomfortable spending the people's money, and he thought the money , instead of going to charities, would go into the debt reduction fund or a reserve fund. TR, May 24, 2005, pp. 260-269.

and increase revenue. Membership fees are dues to various organizations that satisfy either a public or corporate purpose. The anticipated expenditure for these activities is included in Santee Cooper's overall budget. In past years, the Board has budgeted approximately one million dollars of ratepayer money or approximately one tenth of one percent of its revenues for charitable contributions, sponsorships, and membership fees.

Santee Cooper has had a contributions procedure in place for many years. Under the current procedure that has generally been in effect since 1994, requests are directed to the appropriate persons based on the dollar amounts of the requests. The Vice President of the H-G Division may approve contributions not exceeding $500; the Corporate Secretary may approve contributions not exceeding $2,500; the President may approve contributions not exceeding $5,000; the Chairman of the Board may approve contributions not exceeding $10,000; the Contributions Committee may approve contributions not exceeding $25,000; and the entire Board must approve contributions greater than $25,000. In determining whether to approve requests from a particular organization, contributions are considered as to whether they further both a public purpose and the corporate purposes of Santee Cooper.[114] Santee Cooper may contribute to schools or other educational activities; community or civic endeavors; the arts and cultural activities; environmental organizations; safety, health, and human services organizations; and economic development initiatives. Santee Cooper does not contribute to individuals, political campaigns or parties, religious organizations, private for-profit organizations, and solicitations received by form letters.

Analysis

Community support and involvement is expected of corporations. Investor-owned utilities in South Carolina contribute to their communities as does Santee Cooper, in amounts greater than Santee Cooper. In 2000, Duke Energy gave 0.56% of its total electric revenue to charities; Progress Energy (CP&L), 0.21%; SCE&G, 0.11%; Santee Cooper gave 0.10% of its revenues. Santee Cooper has traditionally and historically supported its communities through monetary contributions. Other than an audit by the Legislative Audit Council in 1995, the subcommittee is unaware of any concerns regarding Santee Cooper's contributions. The Legislative Audit Council found that Santee Cooper's policy did not address any potential favoritism made to religious organizations, private educational institutions, and organizations that primarily benefited the members. Santee Cooper addressed these concerns and amended its policy. It appears contributions and sponsorships continued without objection until the fall of 2003.

Some directors appear to have been swayed in their convictions by the desire of the Governor to eliminate contributions and sponsorships. Director Green expressed great concern that he had not been made aware that the Governor expected the directors "to act on these issues." In an email, Director Green seemed perturbed with Chairman Edwards about this issue, complaining that Chairman Edwards had not informed the Board of the Governor's position on

[114] Santee Cooper's policy on contributions defines a "public purpose" as a purpose which has for its objective the promotion of health, safety, morals, general welfare, security, prosperity, and contentment of the general public. A "corporate purpose" is defined as a purpose which has for its objective the furtherance of the lawful business interests and responsibilities of Santee Cooper.

contributions because the Chairman disagreed with the Governor. Director Green also thought the Board was misinformed about the money spent at the Heritage golf tournament. Director Green went so far as to request that General Counsel draft a resolution eliminating all contributions.

The Directors spent an inordinate amount of time and energy on an issue that monetarily had little impact on the ratepayers and distracted the Directors from more important issues. It appears that the Directors did not have the best interests of Santee Cooper at heart in this matter. Rather than finding out the views of the ratepayers so as to make informed decisions for the betterment of Santee Cooper, its ratepayers, and the communities it serves, some directors voted to discontinue or curtail contributions based on their personal beliefs or because of political influence. According to a newspaper article, Governor Sanford believes that the contributions violate the "sanctity of state government's relationship to taxpayers."[115] This position either ignores the fact that contributions are ratepayer monies or reveals that the Governor expected that the monies saved by eliminating or reducing contributions would be returned to the taxpayers perhaps as another "one-time contribution," as was the case with the $13 million transfer to the State.

Santee Cooper has a policy to follow when requests for contributions are received. Once the Board has made a decision to include in Santee Cooper's annual budget an amount for contributions, contributions to charities should not consume much Board time. In fact, only contributions of $10,000 or above should be considered by the Board or the Contributions Committee of the Board. From the fall of 2003 through the end of 2004, the issue of contributions seemed to be overwhelming the Board meetings. The issue kept arising without any conclusion to the matter. The Board seemed to lack direction in dealing with these issues. To settle the issue for the benefit of the recipients and Santee Cooper, the Board should decide what the policy is going to be in the future and adhere to that policy.

Conclusion

Based on our review of the evidence and information presented, the subcommittee finds that the Board circumvented the FOIA by discussing positions on issues concerning contributions and sponsorships via electronic communications.[116] Additionally, we are concerned about the potential harm created by political influence on Board actions, particularly when Directors take a position based on ideology rather than judicious examination of the issues. Finally, we are concerned about the lack of courtesy and respect shown by some Directors toward management and other Directors. As stated above, "a company's board works best when it works as a unified whole, without camps or factions and without internal divisions."[117]

9. Board Understanding and Recognition of Santee Cooper's Relationship to its Largest Customer - Central Electric Cooperative[118]

[115] "Governor Takes Utility to the Woodshed," Post and Courier, 10/1/04.
[116] S.C. Code Ann. §§ 30-4-15 and 30-4-70.
[117] Lipton article, supra.
[118] TR, May 24, 2005, pp. 149-163.

> U.S. Senator James F. Byrnes convinced President Roosevelt to provide the funding for something that would help pull a South Carolina out of an economic calamity. Senator Byrnes persuaded the president that lighting up and energizing the rural areas of the state, where 93 percent of the people were without electricity, could accomplish economic recovery. The means for doing that was to create the power-producing state utility that came to be known as Santee Cooper.
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> . . .
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> Since its beginning, no South Carolina tax-generated revenues have ever been appropriated by the General Assembly for the design, construction, operation or maintenance of the Santee Cooper system. By law, the state of South Carolina is never to be financially obligated by Santee Cooper. Santee Cooper has met the needs of the people it serves, expanded its electric generating capability, increased its services, and through the electric cooperatives, brought affordable power to the rural areas of South Carolina.

"History of Santee Cooper" from www.santeecooper.com/aboutus/history.html.

Central Electric Power Cooperative, Inc. (Central) is a generation and transmission cooperative that purchases wholesale power from Santee Cooper under a Power System Coordination and Integration Agreement and furnishes it to its member distribution electric cooperatives. Central purchases approximately 50% of Santee Cooper's generation, making it Santee Cooper's largest customer. Santee Cooper generation accounts for approximately 85% of the generation purchased by the electric cooperatives. Under their agreement, Central shares 50-50 in the proceeds from the sale of certain properties of Santee Cooper.

In his Forward to the First Boston Study dated May 5, 2005, Director Keith Munson notes: "Another issue worthy of consideration in this deliberative process is the relationship among Santee Cooper, the electric cooperatives and ultimate users of Santee Cooper electricity in South Carolina." Mr. Munson states that Santee Cooper charges Central 4.5¢ per Kwh for electricity. Central then resells the electricity to individual electric cooperatives which then resell it to their member-owners. Mr. Munson states, "[t]he mark up by the time the electricity reached the residential customer was approximately 3.5¢ (to 8¢)." Mr. Munson then discusses how the electric cooperatives could reduce the electric bills of their customers by 12.5% for the next eighteen years. It is unclear what Mr. Munson considers the markup to include or how he reached his conclusion that the electric cooperatives could decrease their revenues by 25%. Electric cooperatives are non-profit entities. They have 68,000 miles of transmission and distribution lines in this State. Electric cooperatives serve about nine consumers per mile of line. Progress Energy has about 17.5; Duke, 23; and SCE&G, 27.[119] Clearly, the electric cooperatives incur costs to install and maintain facilities to distribute electricity to their member-owners. Mr. Munson's simplistic and inaccurate analysis that implies that the electric cooperatives are making inordinate profits can do nothing but alienate the electric cooperatives.

When Santee Cooper was considering the one-time contribution of $13 million to the State in November 2003, then Chairman Edwards told the Governor that a majority of the Board felt that the increase in Santee Cooper's payment to the State was not the best means to provide

[119] Source: http://www.ecsc.org/scstory.htm#consumer.

additional value to the State. He stated that the electric cooperatives and large industrial customers agreed with that opinion.[120] Beginning last summer, Santee Cooper and Central began meeting to discuss ways "to enhance and improve [their] investment toward improving [their] value to South Carolina." It appeared that the relationship between Santee Cooper and Central had been improved by their joint efforts; however, the co-ops apparently heard rumors regarding the privatization or valuation study last fall and Lonnie Carter, Santee Cooper's President and CEO, believes that it hurt their relationship not to be able to discuss the study with Central since he thought they could not argue with a study to look at the value of Santee Cooper.[121]

The subcommittee believes it is important for the Board to respect Santee Cooper's relationship with all customers. The relationship with Central, however, is crucial to the long-term continued success of Santee Cooper. The agreement between Santee Cooper and Central continues for another twenty years. Cooperatively, they electrify 40% of the state's population over 70% of the state's land. The relationship between Santee Cooper and Central can and should be improved and enhanced by Board member education and by openness on issues that impact Central.

10. Director Temperament and Behavior[122]

Throughout the subcommittee's investigation, one of the recurring themes was the lack of camaraderie and cohesiveness among Board members. While disagreements and differences on policy matters are to be expected, a Board should be united under a common mission. Many of the emails, Board minutes, and actions by individual Directors evidenced a pattern of disrespect, lack of courtesy, and mistrust toward other Directors and management.

Board dynamics have a profound impact on the productivity and success of a company. "One of the single most important factors in ensuring that a board meets all of its duties is having the right 'tone at the top' of the corporation. The tone at the top will form the culture of the corporation and permeate the corporation's relationship not only with investors, but also with employees, customers, suppliers, local communities and other constituents."[123] Instances of going behind the management on issues, accusing management of incompetence, and assuming duties reserved to management damages employee morale and affects all aspects of the company. Examples of disrespectful behavior and mistrustful attitudes are numerous. Staff discovered emails telling the management to concentrate on public power and stay out of "board" issues,[124] accusing management of getting Santee Cooper into a mess when they were following established procedure,[125] and ridiculing the work product of employees.[126] One Director stated in an email: "If the legislature is going to second guess our decisions and twist

[120] Letter dated 11/24/03 from Graham Edwards to Governor Sanford.
[121] Emails from Guerry Green to Lonnie Carter, 11/10/04, 9:34 p.m., from Lonnie Carter, 11/11/04 5:49 p.m., and from Guerry Green to Lonnie Carter, 11/11/04, 6:35 p.m., and from Lonnie Carter to Guerry Green, 11/11/04, 7:11 p.m.
[122] Various pages across Transcript.
[123] Lipton article at 2, supra.
[124] Email from Coen to Carter, August 15, 2004, 10:11 a.m.
[125] Email from Guerry Green to Richard Coen, 9/14/04, 11:31 a.m. and from Guerry Green to Graham Edwards, 9/14/04 11:58 a.m.
[126] Email from Richard Coen to Dial DuBose, 9/13/04, 10:47 p.m.

the truth then I say we vote to increase the payment to the state to 2%." This "we'll show them" attitude does nothing to further the interests of Santee Cooper. There were instances where Board meetings became heated over sensitive issues, and directors violated proper decorum by raising their voices and using inappropriate language.[127] Mistrustful attitudes were apparent when on at least three separate occasions individual directors became involved in duties that should have been reserved to management.[128]

"Rogue" board members communicated with vendors,[129] bond-rating companies,[130] and investment firms doing a valuation report without the backing of the entire Board.[131] Finally, a Board member apparently assumed the status of Board Legal Counsel when he rendered in writing a legal conclusion that was at odds with the opinions of the General Counsel of Santee Cooper.[132]

It appears some Directors were attempting to pursue interests other than that of Santee Cooper. It is important that directors act with the best interests of Santee Cooper in mind. They should not be pursuing someone else's agenda and should be respectful of other directors' positions and should not demean other directors, management, and staff. If boards operate within the confines of a certain set of procedures and duties, the corporation will operate efficiently.

Conclusion

The subcommittee has invested a significant amount of member and staff time and Senate resources to establish a record upon which the Senate may make informed decisions on the confirmation of the Governor's appointments to the Santee Cooper Board. The purpose of the subcommittee's investigation was to ensure to the greatest extent possible that the appointees were qualified in accordance with the provisions of Act 137 of 2005 and that the appointees were knowledgeable about their corporate responsibilities and would make decisions and take actions consistent with the best interests of Santee Cooper in mind in accordance with Act 137 of 2005.

Based on the testimony received and the evidence presented, it is clear that the Board became distracted from its core mission. It became a fractious, divided board because of the actions of several Board members. There appeared to be an agenda advanced by a minority of the Board that was not in the best interests of Santee Cooper. Some actions were reckless and could have been costly to Santee Cooper and its customers and bondholders and the State. Other actions bordered on bullying. It appeared there was an intent on the part of some Board members to oust a former chairman. It is the subcommittee's view that some members of the Board would have succumbed to outside influences were it not for the majority of the Board to

[127] Testimony of Dial DuBose, TR, May 24, 2005 p. 183.
[128] *See* discussion on Issue Nos. 1, 4, and 7, the valuation study, surplus property, and the gypsum plant deal.
[129] Coen with Drummond Coal and Maybank Shipping, real estate brokers in regards to surplus property, and American Gypsum.
[130] Green with Standard & Poor's.
[131] Munson with Credit Suisse/First Boston.
[132] Munson's forward and comment on the Clark case. *See also* Gilreath's testimony concerning board member-lawyers with regards to experts. TR, ___.

keep those members in check. While some of the subcommittee's concerns have been alleviated by Mr. Munson's resignation and Governor Sanford's withdrawal of the appointment of Mr. Green, an overwhelming majority of the members of this subcommittee believe that Mr. Coen's repeated acts of malfeasance require his immediate resignation or removal from the Board. To its credit, Santee Cooper management surmounted every obstacle the Board intentionally and unintentionally placed in the way of fulfilling its mission. The subcommittee has reached a unanimous and unequivocal determination that the Santee Cooper Board must refocus its attention and energy toward accomplishing Santee Cooper's core mission - continuing to serve South Carolinians across our State as one of the nation's preeminent public power and water utilities. In future screenings, this subcommittee and hopefully the Public Utilities Review Committee will expect all appointees, incumbents and newcomers, to have thoughtfully considered the challenges faced by the Board and whether they are willing to work in the "best interests" of Santee Cooper. Rather than leaving the full Judiciary Committee and any future appointees to rely upon our guidance alone, however, we would direct them to excerpts from the testimony of Carl Falk and John Rainey:

Falk's Testimony:

> Staff Counsel: If you could leave right now and drive to Moncks Corner and have all of the other Board members there, and if you could close the door and just say, folks, three things I've learned in Columbia. . . . what three things would they be, Mr. Falk?
>
> Mr. Falk: Well, you know, I think the first thing that I would like to reiterate is that the Board is there to be advisors to the executive management of Santee Cooper, and then to provide some oversight. But we're not to be there to be involved in day-to-day operations. And I'd have to reiterate everything that I've heard from Senator Mescher and Mr. Rainey. We've got an absolutely outstanding management team at Santee Cooper. It's not an organization that's broke and that needs to be completely restructured. It's a fine-tuned -- in my opinion, it's a fine-tuned organization today that we want just to constantly improve, as I said yesterday.
>
> I think the second thing that I'd like to reiterate is that there has to be absolute -- and this is one of the things that I processed while I've been here for the last two days that's been very important to me. It has to be a very definite process at the Board level. There has to be a process implemented so that there's no Board members going all out, doing all sorts of things. There has to be respect for the Board chairperson, respect for the CEO, the management team at Santee Cooper, and we're to function as a Board and not as eleven individual people.
>
> Staff Counsel: I had asked for three. Is there a third one?
>
> Mr. Falk: Oh, I'd probably want to go back and -- you know, maybe this is on a more personal basis -- offer an apology to the management team at Santee Cooper for what they've had to go through and, you know, just for what we've put them through. As a Board, perhaps as a state government, in the newspapers, it's been -- I'm sure it's been defying. I have been in their place, in some sense, in the past in various jobs, and it's difficult for them to keep their eye on the ball when they are faced with all of this other stuff that's been going on for the last six months or so.

TR, May 18, 2005, p. 131 - line 20 - p. 133, line 15.

Rainey's Testimony:

> Mr. Rainey: Senator from Orangeburg, I believe that implicit within the concept of a fiduciary duty, it is stewardship. I don't see how you can separate the two. I really -- you know, I don't have an answer for your question. As I said yesterday, it's hard for me to understand, listening to all of the testimony that's going on from the paper trail you have for the last couple of days, what the end game really is here and how we're advancing the marker for the state of South Carolina.
>
> The Santee Cooper Board is no place for on-the-job training. You need to have already been there to be there. Or as I said another way, we're playing with black chips here.

TR, May 19, 2005, page 56, lines 9-22.

Rainey's Testimony:

> Mr. Rainey: I would say that what I have heard over the past few days could best be characterized as bizarre. I have never heard of anything like this before or seen anything like this before. I believe that our game, our collective end game, the Governor's Office, the Senate, mine, Santee Cooper's Board, Central, everybody, should be to move immediately and expeditiously to restore the integrity to the name of Santee Cooper, to restore its visibility in the national eye to the level it has earned over all of these years.
>
> In order to do that, we have got to move expeditiously to solve the issues that have been addressed by these Board problems. We need a chairman, we need a Board that will act in the best interest of Santee Cooper that will be, as the Senator from Orangeburg stated, good stewards of their charge. A concept embedded in fiduciary duty.
>
> And this needs to be done now. We need to bring all of this to a merciful conclusion as fast as we can for the sake of the authority, for the sake of South Carolina.

TR, May 19, 2005, p. 71, line 23 - p. 72, line 19.

Falk's Testimony:

> Staff Counsel: Why in the world would you sit through these two days of hearings and still want to spend any time with Santee Cooper?
>
> Mr. Falk: Well, I fully agree with Mr. Rainey, though. I think Santee Cooper is extremely important to all of the citizens of South Carolina, and it's the economic engine for South Carolina. And when I take a look at my service for Low Country Food Bank and Habitat for Humanity, I'm not trying to be there just to put my thumb in a hole in a dyke. I'm trying to find a method and processes to change lives on a permanent basis and so that we break the cycles of poverty, we break the cycles of educational issues that we have. And, really, Santee Cooper is a key ingredient into changing the lives of people in South Carolina for the better.

TR, May 18, p. 130, line 12 - p. 151, line 2.

Falk's Testimony

> Senator Elliott: Then what is your views, taking that one step further, and how broad should that bright line be dran(sic) when you're appointed by the Governor, confirmed by the Senate, how much should that line be dimmed by the Governor being involved in your decision-making as a Board member at Santee Cooper?
>
> Mr. Falk: Well, I guess, speaking of my own perspective as a Board member, I look that once I have been appointed, I've been appointed for my ability to make solid judgments and I do not see myself being influenced. That's not to say that I will not listen to different points of view. But at the end of the day, whether it's the General Assembly, with all respect or whether it's the Governor's Office, I will make a decision that I feel is in the best interest of Santee Cooper and its stakeholders, regardless of any pressure that's put on.

TR, May, 18, p. 144, line 14.

Sincerely,

Luke A. Rankin
on behalf of the Subcommittee

John Thomas Molnar
Santee Cooper Board of Directors
Seat: Horry County
Term: Unexpired Portion of May 19, 2002 through May 19, 2009
(Interim Appointment)

Subcommittee's Findings: **QUALIFIED (Rankin, Martin, Hutto, and Elliott)**
NOT QUALIFIED (Mescher)

(1) Constitutional and Statutory Qualifications:

Based on the subcommittee's investigation, Dr. Molnar meets the general qualifications prescribed by law for service as a Director for Santee Cooper. He resides in territory served by Santee Cooper in Horry County and that he is a Santee Cooper customer. These residency and utility service requirements were established by Act 137 of 2005, effective May 25, 2005.

Dr. Molnar was born on January 28, 1958. He is 47 years old and a resident of Myrtle Beach, South Carolina. Dr. Molnar provided in his application that he has been a resident of South Carolina for at least the immediate past five years.

(2) Educational Background:

Dr. Molnar attended and received degrees from the following colleges and graduate or professional schools:
(a) Ohio Wesleyan University, B.A. in Chemistry, 1980;

(b) University of Cincinnati College of Medicine, M.D. with Honors, 1984;

(c) University of Cincinnati, Medical Center, Emergency Medicine Residency, 1988.

Dr. Molnar stated that he has continued his education during the past five years by participating in "all C.M.E. required by the South Carolina Board of Medical Examiners."

(3) Ethical Fitness:

The subcommittee's investigation did not reveal any evidence of unethical conduct by Dr. Molnar.

Dr. Molnar reported that he has made certain campaign expenditures:
(a) Contributions to Governor Mark Sanford equaling $2,000.

(b) The amount of $500 to both Senators Daniel Verdin and Kent Williams.

(c) The amount of $200 to Representative Thad Viers.

(4) Required Academic Ability:

Under Act 137 of 2005, the subcommittee is required to determine if Dr. Molnar has:

(a) Working knowledge of the activities and affairs of Santee Cooper;

(b) The ability to interpret legal and financial documents and information;

(c) With the assistance of counsel, the ability to understand and apply federal and state laws, rules, regulations as they relate to Santee Cooper, including the Freedom of Information Act;

(d) And with the assistance of counsel, the ability to understand and apply judicial decisions as they relate to the activities and affairs of Santee Cooper.

The subcommittee was impressed with Dr. Molnar's diligence in familiarizing himself with the operations and activities of Santee Cooper. He attended two days of subcommittee hearings prior to his confirmation hearing. Dr. Molnar is rapidly developing an awareness of the activities and operations of Santee Cooper. He has served on boards of other corporations, although none of the size or magnitude of Santee Cooper. The subcommittee was assured by Dr. Molnar that he would not take direction from the Governor on issues requiring Board action, but would take actions consistent with what he believes is in the best interests (as defined by Act 137) of Santee Cooper even if they conflicted with the Governor's position on an issue. In fact, he testified that the duties of loyalty and care established by Act 137 are "crystal clear."[133]

(5) Preferred Professional Experience and Training:

With the passage of S. 573, the Santee Cooper Board will be subject to higher standards than what has been required in the past. To further Santee Cooper's mission of being the State's leading resource for improving the quality of life for the people of this State, a smooth and efficient transition is needed. At the end of the transition, it is important that all 11 members of the Board have experience serving on a large corporate board, with complex

[133] TR, May 31, 2005, pp. 28-29.

legal matters, with complex financial matters, or in the operation of an energy utility.[134] However, in order to preserve the integrity of Santee Cooper throughout the transition and beyond, the directors' duties of care and loyalty must not be compromised. In reviewing Dr. Molnar's experience level favorably, the subcommittee has demanded absolute compliance with the legal requirements regarding the corporate duties of care and loyalty, while allowing Dr. Molnar to continue to demonstrate his eagerness and aptitude for learning how to best serve Santee Cooper as a Board member. Santee Cooper constituencies deserve to have their interests protected as those of private corporations are protected. It is our hope that these goals will be accomplished.

(6) Character and Reputation:

The subcommittee's investigation of Dr. Molnar did not reveal evidence of any convictions or criminal allegations made against him. The subcommittee's investigation of Dr. Molnar did not indicate any evidence of a troubled financial status. Dr. Molnar has handled his financial affairs responsibly.

The subcommittee also noted that Dr. Molnar was punctual and attentive in his dealings with the subcommittee, and the subcommittee's investigation did not reveal any problems with his diligence and industry.

Dr. Molnar has good standing in his community as well as a personal history of sound business affairs.

(7) Experience:

Dr. Molnar has worked for the following as listed in his personal data questionnaire:

"(a) Middletown Regional Hospital, Middletown, OH
Emergency Physician (1987-1988);

(b) Clermont Mercy Hospital, Batavia, OH
Critical Care Physician (1987-1988);

[134] Both James Gilreath and John Rainey spoke to the need for significant expertise and experience prior to service on a board such as Santee Cooper's. Gilreath expressed a desire for a board to have a "collective knowledge. . . [and] to be able to solve most of the problems" and that the qualification standards established by Act 137 of 2005 were "a minimum . . . and certainly not too much to ask." TR, May 17, 2005, pp. 19-20 and 58. Mr. Rainey spoke to the value of his own extensive corporate experience prior to being appointed to the Santee Cooper Board. TR, May 17, 2005, pp. 148–149. We hope that Dr. Molnar will continue to "take and listen to everything he [Mr. Rainey] says seriously." TR, May 31, 2005, pg. 87.

(c) Booth Memorial Hospital, Florence, KY
Critical Care Physician (1987-1988);

(d) Mullins Hospital, Mullins, S.C.
Staff Emergency Physician (1988);

(e) Marion Medical Center, Marion, S.C.
Part Time Staff Emergency Physician (2000-Present);

(f) Grand Strand Regional Medical Center, Myrtle Beach, S.C.
Carolina Health Specialists Staff Emergency Physician (1988-1999);

(e) Grand Strand Regional Medical Center, Myrtle Beach, S.C.
Carolina Health Specialists Medical Director in clinical and administrative capacity (1999-Present)."

Dr. Molnar reported that he has served as a member of the following boards:
"(a) A member of the Research Centers of Economic Excellence Review Board through 2006;

(b) Vice president and member of board of directors of Carolina Health Specialists (currently serving);

(c) Vice-Chief of Medicine, Columbia Grand Strand Regional Medical Center (1993-1994);

(d) Chief of Medicine, Columbia Grand Strand Regional Medical Center (1994-1996);

(e) Vice Chief of Staff, Columbia Grand Strand Regional Medical Center (1996-1997);

(f) Chief of Staff, Columbia Grand Strand Regional Medical Center (1997-1998);

(g) Member, Board of Directors, S.C. M.E.D.P.A.C. (1997-2002, 2004-Present);

(h) Member, Board of Directors, MarketMax Inc. -- a private retail software company now a division of SAS (1996-2002);

(i) Member, Board of Trustees, Grand Strand Regional Medical Center (2002-Present)."

Dr. Molnar plans to resign from Research Centers of Economic Excellence Review Board if his appointment is confirmed.

(8) Miscellaneous:

Dr. Molnar is married to Christine Lindberg Molnar. They have one child: Jessica Christine Molnar, age 10.

Dr. Molnar provided that he was a member of the following civic, charitable, educational, social, or fraternal organizations:

(a) A member of Governor Sanford's Health Care Task Force in 2003;

(b) Volunteer with the Myrtle Beach Marathon;

(c) Lecturer SCMA Risk Management Seminars;

(d) Lecturer to Grand Strand Senior Friends;

(e) Member, Dunes Golf and Beach Club (1990-Present);

(f) Soccer Coach Grand Strand YMCA (2000-Present).

Findings As To Overall Qualification:

Dr. Molnar has been nominated to serve as the director representing Horry County. This seat has been vacant since the resignation of Vernie Dove on December 10, 2004. Although Dr. Molnar was appointed February 14, 2005, he has not participated in Santee Cooper Board meetings. Pursuant to the newly enacted legislation, S. 573, Dr. Molnar cannot serve until he has been screened and found qualified. Since Horry County has been without a voice on the Santee Cooper Board for the past six months and will continue to be so, unless the Senate acts on the appointment, the subcommittee was favorably disposed to finding Dr. Molnar qualified prior to the *sine diem* adjournment. With the adjournment of the General Assembly, the Governor's February appointment of Dr. Molnar expired. The Governor's interim appointment of Dr. Molnar, transmitted on June 15, 2005 offers an opportunity for Horry County to be immediately represented if the Senate Judiciary Committee finds him qualified. We, the undersigned members, recommend that the Committee find him qualified.

_____	_____
Senator Luke A. Rankin	Senator Dick Elliott
_____	_____
Senator C. Bradley Hutto	Senator Larry A. Martin

I do not believe that Dr. Molnar meets the qualifications established by law for service on the Santee Cooper Board and would find him not qualified.

_____

Senator William C. Mescher

G. Dial DuBose
Santee Cooper Board of Directors
Seat: Third Congressional District
Term: May 19, 2005 through May 19, 2012
(Reappointment)

Subcommittee's Findings: NOT QUALIFIED

(1) General Constitutional and Statutory Qualifications:

Based on the subcommittee's investigation, Mr. DuBose meets the general constitutional and statutory qualifications for service as a Director for Santee Cooper. He resides in the Third Congressional District. He was born July 15, 1960. He is a resident of Easley, South Carolina. Mr. DuBose provided in his application that he has been a resident of South Carolina for at least the immediate past five years.

(2) Educational Background:

Mr. DuBose received a Bachelor of Science degree from Wofford College in 1983.

Mr. DuBose has attended Leadership South Carolina, has taken continuing education courses as a Certified Hotel Administrator, and has taken various courses regarding county government at the Institute of Government.

(3) Ethical Fitness:

The subcommittee's investigation did not reveal any evidence of unethical conduct by Mr. DuBose.

Mr. DuBose reported that he made no campaign contributions within six months of filing his personal data questionnaire. According to www.followthemoney.org, in 2004, he made contributions of $3,500 to Governor Mark Sanford and $500 to Ken Wingate.

(4) Required Academic Ability:

Pursuant to Act 137 of 2005, the subcommittee must determine if Mr. DuBose has:

(a) Working knowledge of the activities and affairs of Santee Cooper;

(b) The ability to interpret legal and financial documents and information;

(c) With the assistance of counsel, the ability to understand and apply federal and state laws, rules, regulations as they relate to Santee Cooper, including the Freedom of Information Act (FOIA);

(d) With the assistance of counsel, the ability to understand and apply judicial decisions as they relate to the activities and affairs of Santee Cooper.

Mr. DuBose has served on the Santee Cooper Board for two years. He demonstrated an awareness of the activities and operations of Santee Cooper and an ability to interpret legal and financial documents. Of some concern to the subcommittee, however, is Mr. DuBose's understanding of and adherence to the provisions of the FOIA. Mr. DuBose has served on Pickens County Council, the Public Service Commission of Pickens County, and the Tourism Expenditure Review Committee, all of which are subject to the FOIA. Yet, Mr. DuBose participated in numerous violations of the FOIA. He circumvented both the letter and the spirit of the FOIA in that he conducted public business via electronic communications and in executive session without proper notice to the public of the purpose for the executive session and on matters not subject to the exemption from the open meeting laws.

(5) Preferred Professional Experience and Training:

With the passage of S. 573, the Santee Cooper Board is subject to higher standards than what has been required in the past. To further Santee Cooper's mission of being the State's leading resource for improving the quality of life for the people of this State, a smooth and efficient transition is needed. At the end of the transition, it is important that all 11 members of the Board have experience serving on a large corporate board, with complex legal matters, with complex financial matters, or in the operation of an energy utility.[135] However, in order to preserve the integrity of Santee Cooper throughout the transition and beyond, the directors' duties of care and loyalty must not be compromised. Santee Cooper constituencies deserve to have their interests protected as those of private corporations are

[135] Both James Gilreath and John Rainey spoke to the need for significant expertise and experience prior to service on a board such as Santee Cooper's. Gilreath expressed a desire for a board to have a "collective knowledge. . . [and] to be able to solve most of the problems" and that the qualification standards established by Act 137 of 2005 were "a minimum . . . and certainly not too much to ask." TR, May 17, 2005, pp. 19-20 and 58. Mr. Rainey spoke to the value of his own extensive corporate experience prior to being appointed to the Santee Cooper Board. TR, May 17, 2005, pp. 148–149.

protected. It is our view that these goals will be not be furthered by the reappointment of Mr. DuBose.

We are concerned about the potential harm created by political or other outside influence on Board actions, particularly when Directors take a position based on ideology or personal reasons rather than judicious examination of the issues. It appears, for example, that Mr. DuBose did not consider the best interests of Santee Cooper when the issue of charitable contributions was debated over a lengthy time period. Mr. DuBose formulated his decision that Santee Cooper should not make charitable contributions based on ideological reasons rather than a contemplative evaluation of Santee Cooper's long-term policy and the individual requests for contributions.[136] He simply believes that Santee Cooper should not make charitable contributions because it is a state agency. Additionally, Mr. DuBose seemed resentful of the rates Santee Cooper customers enjoy as compared to his personal electric rates from Easley Combined Utilities.

While Mr. DuBose kept above the fray for the most part when Board conversations became contentious, he did not seem to appreciate the gravity of the actions of certain "rogue" directors and excused their actions and behavior. With respect to contact by a coal vendor, Mr. DuBose thought it was appropriate for a Board member to get involved in a meeting because the vendor was a friend of the Board member.[137] A Board member must act with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believes to be in the best interests of the Public Service Authority, as defined in Act 137 of 2005. With respect to other inappropriate actions by Board members, although conceding the members could have acted otherwise if they had had other information, Mr. DuBose stated:

> I don't think anybody ever did anything that they thought was not in Santee Cooper's best interest. I think, a hundred percent, they felt like they were doing what was best. And if that was the test they used, I think that's why they felt like they hadn't done anything wrong.[138]

[136] Santee Cooper was audited by the Legislative Audit Council (LAC) in 1995. The LAC found that Santee Cooper's charitable contributions policy did not address any potential favoritism made to religious organizations, private educational institutions, and organizations that primarily benefited the members. Santee Cooper addressed these concerns and amended its policy. It appears contributions and sponsorships continued without objection until the fall of 2003.
[137] TR, May 31, 2005, pp. 178, 180-182.
[138] TR, May 31, 2005, pp. 178-179.

With respect to the issues raised at the confirmation hearings, Mr. DuBose stated:

> I think the majority of the issues, as I sat in the audience and listened, my impression is that those issues in the light you exposed them are serious. The light which I was exposing it to, it was conversations taking place and issues being batted about, some not intended for public consumption. So I think it's unfair to portray those as being problems, whereas, at the time they were issues that we were trying to work through, and some of them we worked through it.[139]

With respect to Chairman Green's contact with Standard and Poor's to provide them with information which resulted in a negative outlook being placed on Santee Cooper, Mr. DuBose stated:

> He had a relationship with Standard and Poor's. He had been called in to the office a week prior and they had conversations. So it's not like he had to look up their phone number. He knew these folks and had a relationship with them. . . .
> I'm not going to say that he acted inappropriately. I'm not going to say that I would have done that. If I was in a situation I may have asked some other questions and pursued another avenue. But I'm not going to sit here and say that he acted improperly because I wasn't in this situation when it happened.[140]

It concerns the subcommittee that inappropriate actions by Board members, actions that an ordinarily prudent person would not exercise, are summarily dismissed by Mr. DuBose.

Finally, Mr. DuBose is serving as First Vice Chairman and chairs meetings in the absence of the chairman. Thus, at present Mr. DuBose is chairing meetings of the Board. The subcommittee is concerned that Mr. DuBose lacks the depth of experience necessary to not only serve as a Santee Cooper Board member, but also chair the meetings in the absence of the chair. Mr. DuBose offered no substantive ideas when asked what his vision or plan was for Santee Cooper or what he hoped to accomplish.[141]

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[139] TR, May 24, 2005, p. 187.
[140] TR, May 24, 2005, pp. 204-205
[141] TR, May 24, 2005, pp. 178-187.

(6) Character and Reputation:

The subcommittee's investigation of Mr. DuBose did not reveal evidence of any convictions or criminal allegations made against him. The subcommittee's investigation of Mr. DuBose did not indicate any evidence of a troubled financial status. Mr. DuBose has handled his financial affairs responsibly. Mr. DuBose has good standing in his community as well as a personal history of sound business affairs.

(7) Experience:

Mr. DuBose has worked for the following as listed in his personal data questionnaire:

(a) Slone Realty and Management, Myrtle Beach, S.C. -- Real Estate Sales Agent (1983-1985);
(b) Galloway-Tripp, Inc., Piedmont, S.C. -- Division Manager and Purchasing Agent (1985-1987);
(c) Nalley Commercial Properties, Nalley Construction Co., and various other Nalley entities, Easley, S.C. -- Development, Construction and Management of Commercial Real Estate.

Mr. DuBose has served as an officer, director, and partner in connection with a family business, Nalley Properties. He also is on the board of directors of Community South Bankshares, which is presently in organization.

Mr. DuBose reports on his personal data questionnaire that he is Chairman of the Hospitality Association of S.C., the President of Hotel Motel Association, and a member of the South Carolina Association of Counties.

(8) Miscellaneous:

Mr. DuBose is married to Katherine Nalley DuBose. They have three children.

Mr. DuBose provided that he was a member of the following civic, charitable, educational, social, or fraternal organizations:

(a) Board member of Upstate Alliance;

(b) Member of the Executive Board of the Boy Scouts of America, Blue Ridge Council;

(c) Board member of the Young Men's Christian Association;

(d) Board member of the Easley Rotary Club;

(e) Board member of the South Carolina History and Archives Foundation;

Findings As To Overall Qualification:

Mr. DuBose has been nominated for reappointment as the director representing the Third Congressional District. Based on the subcommittee's investigation of Mr. DuBose, we, the undersigned members, recommend that the Committee find him not qualified.

_____
Senator Luke A. Rankin, Chairman

_____
Senator William C. Mescher

_____
Senator Dick Elliott

_____
Senator C. Bradley Hutto

I would find Mr. DuBose qualified.

_____
Senator Larry A. Martin