

State Regulation of Public Utilities Review Committee

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MEMORANDUM

TO: Honorable Jeffrey Gossett
South Carolina Senate

FROM: Thomas C. Alexander

DATE: April 21, 2009

On November 10, 2008, the Governor submitted the names of the candidates shown below for the Senate's consideration for appointment to the Board of Directors of the South Carolina Public Service Authority (Santee Cooper). The appointments were referred to the Judiciary Committee on January 29, 2009. The Governor also submitted Pastor Marion Newton as a candidate for initial appointment to the Sixth Congressional District Seat. The Governor withdrew Mr. Newton's appointment on March 30, 2009.

Second Congressional District Seat: Leighton Lord (Initial Appointment)
Berkeley County Seat: Peggy Pinnell (Initial Appointment)
Fourth Congressional District Seat: Barry D. Wynn (Reappointment)

Pursuant to Act 137 of 2005, the State Regulation of Public Utilities Review Committee (Review Committee) is charged with the duty "to review candidates for appointment to the South Carolina Public Service Authority Board of Directors as submitted by the Governor to determine whether the candidates meet the qualifications set forth in Section 58-31-20." S.C. Code Ann. §58-3-530(14).

Section 58-31-20(C) provides that Santee Cooper directors "must possess abilities and experience that are generally found among directors of energy utilities serving this

State and that allow him to make valuable contributions to the conduct of the authority's business." These abilities include:

- (1) general knowledge of the history, purpose, and operations of the Public Service Authority and the responsibilities of being a director of the authority;
- (2) the ability to interpret legal and financial documents and information so as to further the activities and affairs of the Public Service Authority;
- (3) with the assistance of counsel, the ability to understand and apply federal and state laws, rules, and regulations including, but not limited to, Chapter 4 of Title 30 as they relate to the activities and affairs of the Public Service Authority; and
- (4) with the assistance of counsel, the ability to understand and apply judicial decisions as they relate to the activities and affairs of the Public Service Authority.

Additionally, pursuant to Section 58-31-20, directors representing the counties of Berkeley, Georgetown, and Horry must reside in those counties and be customers of Santee Cooper.

Serious challenges face energy utilities today. On the federal level, legislation is being considered that could dramatically impact the rates charged by electric utilities. The U.S. Congress is considering legislation to address global warming and is proposing reductions in emissions of greenhouse gases, particularly carbon dioxide. Proposed legislation may result in electric utilities that rely on greenhouse emitting facilities, mostly coal-fired generation facilities, to pay a surcharge for continuing their use of coal-fired plants. Santee Cooper could be more severely impacted by this legislation than other utilities because of its significant reliance on coal to generate electricity.

The Review Committee conducted an inquiry into energy issues last fall and found that eighty percent of Santee Cooper's electricity is generated by coal plants. In comparison, only sixty percent of electricity generated by the investor-owned utilities in South Carolina is produced by coal facilities. If the U.S. Congress enacts a cap-and-trade system to impose a mandatory reduction in U.S. carbon dioxide emissions, South Carolina households may see their electric bills increase dramatically. The report found that the average household could pay an additional \$102 annually if the surcharge is \$12 per ton; \$1,270 if the surcharge is \$150 per ton. This is a significant and complex issue facing our electric utilities and the citizens of this State. The Review Committee believes that any individual being appointed to the Santee Cooper Board of Directors should have a basic knowledge of energy issues, particularly issues of current interest at the state and federal level. A candidate also should have working knowledge of how these issues would impact Santee Cooper's operations; therefore, a large portion of the

Review Committee's investigation delved into each candidate's knowledge of energy issues and Santee Cooper's operations.

Section 58-31-55 requires that a Santee Cooper director must discharge his duties in good faith, with the care an ordinarily prudent person would exercise and in a manner he reasonably believes to be in the best interests of Santee Cooper ("best interests" are determined by balancing three factors: customer interest, economic development of service area, and preservation of financial integrity of Santee Cooper). Directors are subject to personal liability for violating §58-31-55, and wholesale and retail customers of Santee Cooper (including indirect customers of Santee Cooper through electric cooperatives) are authorized to bring suit against any director alleging a breach of fiduciary duties.

A Board of Directors has a general duty to act in the best interests of a corporation. Such fiduciary duties include the duty of loyalty and the duty of care.¹ The duty of loyalty provides that directors and officers must remain loyal to the corporation, acting at all times in the best interests of the corporation and its shareholders whose interests must take precedence over any self-interest of the director, officer, or controlling shareholder that is not shared by the stockholders generally. The duty of loyalty includes the duty to avoid conflicts of interest and prohibit faithlessness and self-dealing. The duty of care requires a director to act in good faith and with the level of care of an ordinarily prudent person in similar circumstances.

In the spring of 2005, a Senate Judiciary Subcommittee was given the responsibility to screen four candidates for appointment to the Santee Cooper Board. The Senate Judiciary Subcommittee's investigation found a board that was divided on issues and was not working in the best interest of Santee Cooper. Among other things, the Senate Judiciary Subcommittee found: (1) there was a lack of understanding on the part of some directors as to their role, resulting in micromanagement; (2) the Santee Cooper Board violated the Freedom of Information Act (FOIA) provisions on numerous occasions; and (3) in some instances, Board members seemed to be furthering a political agenda or their own self-interests, rather than advancing what was in the best interests of Santee Cooper and its mission. Given that backdrop, prior to the screening hearing, the Review Committee sent the candidates submitted for initial appointment a set of questions to elicit information with respect to their background, their knowledge of the operations of Santee Cooper, their knowledge of best practices for boards of directors, and their knowledge of FOIA. The Review Committee sent Mr. Wynn, the candidate for reappointment, a set of questions tailored to a candidate who is a sitting director. The candidates' responses are attached to this report. The candidates appeared before the Review Committee on March 25, 2009, and answered further questions from the Review Committee on those issues and others. The transcript and exhibits are appended to this report by reference and are posted on the General Assembly's website at

¹ In the typical corporate setting, these duties extend to the shareholders, as owners of the corporation. Santee Cooper, as a public utility, is a quasi-state agency; thus, the board owes duties not to shareholders, but 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.

<http://www.scstatehouse.gov/citizensinterestpage/PublicUtilitiesReviewComm/SanteeCooperScreening.html>.

FINDINGS AS TO QUALIFICATIONS

The Review Committee finds that the candidates for appointment to the Santee Cooper Board of Directors, Leighton Lord (Second Congressional District Seat); Peggy Pinnell (Berkeley County Seat); and Barry D. Wynn (Fourth Congressional District Seat), meet the required legal qualifications and finds the candidates qualified for appointment to the Santee Cooper Board of Directors.

W. Leighton Lord, III
Santee Cooper Board of Directors
Seat: Second Congressional District
Term: May 15, 2008, through May 15, 2015

Review Committee's Findings: **QUALIFIED**

(1) Constitutional and Statutory Qualifications:

Mr. Lord meets the general qualifications prescribed by law for service as a Director for Santee Cooper. Mr. Lord is a resident of Columbia, South Carolina. He is a qualified elector of this State. Mr. Lord 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. Lord received an undergraduate degree from the University of Delaware in 1986, and graduated from Vanderbilt Law School in 1989. He became a member of the Delaware Bar in 1989 and a member of the South Carolina Bar in 1994.

(3) Ethical Fitness, Character, and Reputation:

The Review Committee's investigation did not reveal any evidence of unethical conduct by Mr. Lord and did not reveal evidence of any convictions or criminal allegations made against him. Mr. Lord has good standing in his community as well as a personal history of sound business affairs.

(4) Required Academic Ability:

Under Act 137 of 2005 (S.573), the Review Committee is required to determine if Mr. Lord 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; and
- (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. Lord's responses to written and oral questions indicate he has familiarized himself with the operations and activities of Santee Cooper. Mr. Lord began his career in corporate government clerking for the Delaware Court of Chancery and practicing corporate governance in Delaware. Mr. Lord states: "I've been a

transactional lawyer all of my career, which has involved understanding, figuring out and implementing complex financial structures and transactions which I believe is core to the operation of an entity like Santee Cooper which has a very complex financial background.” Tr. p. 9, ll. 8-13. Mr. Lord assured the Review Committee that he would take actions consistent with what he believes are in the best interests (as defined by Act 137) of Santee Cooper.

(5) Professional Experience and Training:

It is important that all eleven 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.

Mr. Lord became a member of the Delaware Bar in 1989 and a member of the South Carolina Bar in 1994. After Serving as a Clerk for the Delaware Court of Chancery, he practiced corporate litigation with the firm of Ashby & Geddes. He then served for three years as Staff Counsel to the U.S. Senate Subcommittee on Investigations. He joined Nexsen Pruet LLC in 1994, and has been serving as Chairman of the Board since 2005. Mr. Lord is a former member of the Statewide Board for the Urban Land Institute, and is currently Chairman of the Board of Directors for Heathwood Hall Episcopal School.

(6) Knowledge of Current Energy Issues:

Mr. Lord has a good understanding of Santee Cooper’s mix of generation facilities, the age and remaining life of its facilities and the attendant challenges presented by those factors, as illustrated below:

Well, I think the biggest problem in cap and trade is probably one of the most topical things that might happen out of Washington, it would raise the cost of providing power to people and businesses in Santee Cooper's district, which includes the co-ops, of course, which includes their power. So I think it would be a cost that would be imposed on our state that would have to be borne by some of the people who consume it.

But I think that one of the other factors is it would probably make us less competitive as a state that tends to get its fair share of good businesses that want to relocate from abroad and come to Northeast. Because I know our competitive power costs are an attraction to our state. And that would be something that we couldn't offer to someone willing to come to South Carolina to bring jobs.

Tr. p. 11, l. 15 – p. 12, l. 6.

Mr. Lord has an understanding of several basic concepts of generation and distribution of electricity, energy efficiency and conservation, and purchased power. He also showed an understanding of renewable energy and the potential for certain sources of renewable energy in South Carolina.

(7) Independence:

Mr. Lord was asked in the questionnaire how his ideological and political beliefs would affect his decision making as a Board member. He responded:

A Board member's duty of loyalty requires a Board member to always act in the best interest of Santee Cooper and Santee Cooper's mission. This duty is paramount to an individual's political or ideological beliefs.

Exhibit 2, Page 6, Question 10.

Findings As to Overall Qualification:

Mr. Lord has been nominated to serve as the director representing the Second Congressional District on the Board of Directors of Santee Cooper. The Review Committee believes Mr. Lord possesses the depth of experience to enable him to be a successful member of the Santee Cooper Board of Directors, and recommends that the Review Committee find him qualified.

Peggy Pinnell
Santee Cooper Board of Directors
Seat: Berkeley County
Term: May 15, 2007, through May 15, 2014

Review Committee's Findings: **QUALIFIED**

(1) Constitutional and Statutory Qualifications:

Ms. Pinnell meets the general qualifications prescribed by law for service as a Director for Santee Cooper. Ms. Pinnell is a resident of Moncks Corner, South Carolina. She is a qualified elector of this State. Ms. Pinnell provided in her application that she has been a resident of South Carolina for at least the immediate past five years.

(2) Educational Background:

Ms. Pinnell received a B.S. degree in Psychology from Baptist College (now Charleston Southern University) in 1970. She received a Masters in Education degree from the College of Charleston in 1976 and a Specialist in Education degree from the Citadel in 1980. She holds the following insurance licenses: Property & Casualty, Life & Health, Marine, Series 6, and Series 63. She also was certified as an elementary and middle school teacher and school superintendent from 1970-82.

(3) Ethical Fitness, Character, and Reputation:

The Review Committee's investigation did not reveal any evidence of unethical conduct by Ms. Pinnell and did not reveal evidence of any convictions or criminal allegations made against her. Ms. Pinnell has good standing in her community as well as a personal history of sound business affairs.

(4) Required Academic Ability:

Under Act 137 of 2005 (S.573), the Review Committee is required to determine if Ms. Pinnell 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; and
- (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.

Ms. Pinnell's responses to written and oral questions indicate she has familiarized herself with the operations and activities of Santee Cooper. Ms. Pinnell assured the Review Committee that she would take actions consistent with what she believes are in the best interests (as defined by Act 137) of Santee Cooper.

(5) Professional Experience and Training:

It is important that all eleven 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.

Ms. Pinnell has been an insurance agent with State Farm since 1982. According to Ms. Pinnell's responses to written questions, she sells and services financial products for her insurance customers and actively participates in educational experiences specific to business development, insurance, risk management, and financial services, which include investments and retirement planning. Ex. 6, question 1. She has served on the following boards: Berkeley County Museum (Chairman and member), Callen Lacey Board of Directors, Berkeley County Habitat for Humanity Board, and Trinity Episcopal Church of Pinopolis (Jr. Warden and Vestry member).

(6) Knowledge of Current Energy Issues:

Ms. Pinnell has a basic understanding of Santee Cooper's mix of generation facilities and the challenges presented by Santee Cooper's substantial reliance on electricity generated by coal facilities:

Well, with coal, it being the most obvious fuel that we use, the board set for Santee Cooper the goal of 40 percent of non-emitting gases by 2020. I think that is very difficult simply because we don't yet have nuclear permits. There's not enough methane gas. Conservation is going to help some but not a lot, at least not immediately. We've got a lot of houses that haven't been weatherized well. Just all kinds of issues that we're going to have to address and address them fairly rapidly, I would say.

Tr. p. 68, l. 15 – 24.

Well, if the largest percentage of ours is coal fire, then obviously we're going to have lots of customers with major issues. . . . So I would say that, first of all, that's going to make life very, very difficult for a very, very lot of people. I don't see any way that we can make any major conversion immediately. I just can't see that. I can't see a permit happening for nuclear for eight more years maybe, maybe longer than that.

And in spite of the fact that I say we produce a lot of junk, I can't see the landfill stepping up to bat. And I know Santee Cooper has made a heroic effort to investigate wind use. At this point, that does not seem terribly reliable. Can't get more than a class five wind with the turbines that they've experimented with, I believe, in Holland.

Tr. p. 69, l. 6 – p. 70, l. 3.

Ms. Pinnell has an understanding of several basic concepts of generation and distribution of electricity, energy efficiency and conservation, and purchased power. She also showed a basic understanding of renewable energy and the potential for certain sources of renewable energy in South Carolina.

(7) Independence:

In the questionnaire, Ms. Pinnell was asked how her ideological and political beliefs would affect his decision making as a Board member. She responded:

While it is no doubt impossible to divorce one's thinking from strongly held beliefs, the presence of those beliefs needs to be acknowledged openly and when they narrowly impact one issue, the person may simply need to excuse themselves from discussion and voting. If it becomes apparent that those beliefs become a factor in many issues, that member should probably remove himself from that board. The board cannot become a forum for perpetuating doctrines or beliefs when they are in conflict with the best interest of the many. If those beliefs are core values such as the need to operate with integrity, they should be shared by all. When the interests of Santee Cooper conflicts with the needs of other citizens of South Carolina, the interests of Santee Cooper are not the only consideration and the need for balance exists.

Exhibit 6, Page 4, Question 10.

Findings As to Overall Qualification:

Ms. Pinnell has been nominated to serve as the director representing the Second Congressional District on the Board of Directors of Santee Cooper. The Review Committee believes Ms. Pinnell possesses the depth of experience to enable her to be a successful member of the Santee Cooper Board of Directors, and recommends that the Review Committee find him qualified.

Barry D. Wynn
Santee Cooper Board of Directors
Seat: Fourth Congressional District
Term: May 19, 2007, through May 19, 2014

Review Committee's Findings: **QUALIFIED**

(1) Constitutional and Statutory Qualifications:

Mr. Wynn meets the general qualifications prescribed by law for service as a Director for Santee Cooper. Mr. Wynn is a resident of Spartanburg, South Carolina. He is a qualified elector of this State. Mr. Wynn 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. Wynn received a B.S. degree in Business Administration from the Citadel in 1967. He completed courses in Securities Analysis and Regulation at the NY Institute of Finance in 1969.

(3) Ethical Fitness, Character, and Reputation:

The Review Committee's investigation did not reveal any evidence of unethical conduct by Mr. Wynn and did not reveal evidence of any convictions or criminal allegations made against him. Mr. Wynn has good standing in his community as well as a personal history of sound business affairs.

(4) Required Academic Ability:

Under Act 137 of 2005 (S.573), the Review Committee is required to determine if Mr. Wynn 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; and
- (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. Wynn's responses to written and oral questions reflect that he has working knowledge of the operations and activities of Santee Cooper. Mr. Wynn is chairman of the Finance-Audit Committee of the Board. He states that he has

been involved in all major financial matters at Santee Cooper, including the internal and external audit, since he was appointed to the Board in May 2006. He believes that his background in the capital markets and investment banking have been his most important contribution to the Board. Mr. Wynn also is a member of the Legal Committee and the Human Affairs Committee.

(5) Professional Experience and Training:

It is important that all eleven 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.

Mr. Wynn has been the president of Colonial Trust Co. since 1989 and the president of Colonial Asset Management Inc. since 1997. He was an account executive with the Robinson-Humphrey Co., from 1968-1970 and 1980-91, Frost-Johnson Inc., from 1975-80, and Hornblower-Weeks Inc., from 1970-75.

Mr. Wynn presently serves on the board of the Colonial Trust Company. He has served on the National Advisory Council on Commodity Distribution and the Advisory Council to the Pension Benefits Guarantee Corporation. Also, he has served as a trustee for Blue Ridge Advisors.

(6) Knowledge of Current Energy Issues:

Mr. Wynn understands and appreciates the challenges faced by Santee Cooper as a result of its having the vast majority of its power being produced by a carbon-emitting fuel if the country were to transition to a carbon-constrained economy:

I think it would be enormous challenges because right now we really don't have an alternative. If we started looking at, first, it was Grainger and Winyah and started looking at those in terms of shortening their life or converting away from them, closing them up, there really isn't an alternative for that right now. I think it would present an emergency.

I guess what you'd be forced to do at this point in time, you'd probably be forced to build a lot of gas plants, maybe, to, you know, to meet those demands. And of course we do need probably to go ahead and finish the Pee Dee facility and have that on stream as quickly as possible. But I think -- again, I think we're really not in a position right now to be closing a lot of plants because we don't have a lot of surplus production or generation power. And I think it would be a serious problem for them to have to deal with.

We're many years away from building a nuclear plant. We're in the process -- in the permitting process, but, you know, it's somewhat uncertain territory that we're getting into in going

through that process in terms of timing, whether it would be, you know, 16 or 17 or even longer. So any quick and immediate replacement of those older plants, if it had to be done, would create very serious problems.

Tr. p. 106, l. 19 – p. 107, l. 19.

I think it would obviously be a very serious impact. And right now, there are a lot of business and industry that have come to South Carolina, particularly in our area where we serve, they've come here for a lot of reasons. One of the reasons maybe was a friendly labor environment and obviously there are a lot of things that attract everybody to our state. But one of those factors was a fairly inexpensive and reliable energy source.

I think there are a lot of those companies that may actually -- could be a tipping point as to whether they can survive or not, whether they can stay here or not if they saw significant increases in their power bills.

So again, I think it's a big challenge. Any time you raise the cost of power in South Carolina, somebody is going to be affected by it. I think it's obviously all the residents are affected by it, but even more crucial might be the job creators and the people who are providing employment and particularly in our areas but around the state.

Tr. p. 107, l. 24 – p. 108, l. 19.

Mr. Wynn is knowledgeable about power generation, in particular, with the need for generation facilities, the most efficient and cost-effective types of facilities, and the distinction between baseload and peaking facilities:

Well, I think that had we not built Cross 3 and 4 and we built natural gas facilities instead, we would -- our customers would be paying higher rates today than they are paying if we hadn't done that. So some of this is really a matter of whether we're going to continue to provide competitive rates for our customers. And if that wasn't the mission, of course, we really wouldn't worry about the cost of the fuel; and therefore, we may could have made decisions different than what we made or maybe different decisions in the future.

But if costs are one of the driving forces to keep those costs down to be competitive with the retail customers and the industrial customers, then I think coal and nuclear are going to have to be the answer in terms of the baseload. I think they're obviously -- we're making a lot of effort in some of the other areas where we're looking at conservation and doing everything we can to promote that because I think that's incredibly important. It's the cheapest

source of power, if you will. And we're obviously doing the wind studies that you've read about recently, and I think that's an ongoing project. And the solar studies, where we've done different research in that area. We're in the schools promoting that in terms of the research out here. But I don't see that being a significant percentage of the generation that we're going to be talking about for the next few years.

I'm not sure we're there technologically, and I'm not sure whether we're there from a cost competitive point of view. And I just think that if we don't add baseload over the next decade, we are going to be facing shortages.

I think another point, though, about adding coal generation is if we ever are in a position where we do have to close some of the older plants that are less efficient that have more emissions, then it certainly would make sense to me to be adding baseloads of coal that are much more efficient, much more productive. And I think that's what the Pee Dee facility represents.

Tr. p. 110, l. 25 – p. 112, l. 15.

Mr. Wynn understands the difficulty planning for 30, 40, or 50 years out given the uncertainty facing our state and nation, especially with regard to possible cap and trade legislation at the federal level and also with regard to credit markets.

I also think that the issue of legislation and where is it going relative to either [cap and] trade or – [cap and] trade or cutting back on these older facilities before their full life might be exhausted. These are matters that I think we need clarity in order to be able to do these 10- and 15- and 20-year type projections.

So again, I think this is an incredibly difficult time to be able to say what is your generation going to be for the next ten years and what is your credit cost going to be for the next ten years? Maybe one of the most important things that we need to make sure we keep our eye on is the creditworthiness. I think that we've certainly seen a huge change in the credit markets. And the biggest part of this change is that if you are very – have very good creditworthiness and if you're a double A issue or triple A issue with any of those folks, then the credits are going to be available. Even available in this crazy-type market we're in.

But if you're substandard and the people view that you're moving in the wrong direction and you may be a double A going to a double A minus or you're a single A going to a single A minus, if your trend is bad, then the credit markets just don't want to have anything to do with you. And so either you're going to have credits unavailable or the cost to get credit is going to be so high, that any 10-year projection you could have could be blown away

by the fact that you're refinancing 5 percent bonds at 7 or 8 percent.

And I think that may be one of the most crucial things that Santee Cooper is facing over the next decade is to make sure that they maintain that creditworthiness that they've had in their history.

Tr. p. 113, l. 6- p. 114, l. 10.

(7) Miscellaneous:

Mr. Wynn was honorably discharged from the S.C. Army National Guard after serving from 1967 to 1973.

Findings As to Overall Qualification:

The Review Committee believes Mr. Wynn possesses the depth of experience to enable him to continue to be a successful member of the Santee Cooper Board of Directors, and recommends that the Review Committee find him qualified.