

## ***State Regulation of Public Utilities Review Committee***

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### **MEMORANDUM**

**TO:** The Honorable Jeff Gossett, South Carolina Senate

**FROM:** Senator Thomas C. Alexander, Chairman

**DATE:** May 24, 2013

**RE:** Screening of Candidates for Appointment to the Santee Cooper Board of Directors

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On April 30, 2013, 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 April 30, 2013.

First Congressional District Seat:	William A. Finn (Reappointment)
Chairman, At-Large Seat:	W. Leighton Lord, III (Initial Appointment as Chairman; Current Board Member)

Pursuant to Section 58-3-530(14), 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."

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.

Section 58-31-55 requires that a Santee Cooper director must discharge his duties in good faith, with the care of an ordinarily prudent person 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 Section 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.<sup>1</sup> 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.

The Santee Cooper Screening Subcommittee of the Review Committee sent the candidates a set of questions tailored to a candidate who is a sitting director. The candidates’

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<sup>1</sup> 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.

responses are attached to this report. The candidates appeared before the Subcommittee on May 15, 2013 and answered further questions from the Subcommittee on those issues and others. The transcript of the hearing is appended to this report by reference, and is posted on the General Assembly's website at [www.scstatehouse.gov/committeeinfo/PublicUtilitiesReviewComm/2013SanteeCooperScreening.php](http://www.scstatehouse.gov/committeeinfo/PublicUtilitiesReviewComm/2013SanteeCooperScreening.php). The Review Committee met on May 22, 2013, to consider the Subcommittee's report and to make a determination regarding the candidates' qualifications.

**WILLIAM A. FINN**  
**SANTEE COOPER BOARD OF DIRECTORS**  
SEAT: FIRST CONGRESSIONAL DISTRICT  
TERM: MAY 19, 2013 THROUGH MAY 19, 2020

**Review Committee's Findings: Qualified**

1) Constitutional and Statutory Qualifications

Mr. Finn meets the general qualifications prescribed by law for service as a Director for Santee Cooper. Mr. Finn is a resident of Mount Pleasant, South Carolina. He has been a resident of South Carolina for at least the immediate past five years and is a qualified elector of this State.

2) Educational Background

Mr. Finn received a Bachelor of Science degree from Philadelphia University in 1972 and received a Master of Science degree from the Institute of Textile Technology in 1975.

3) Ethical Fitness, Character, and Reputation

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

4) Professional Experience and Training

Mr. Finn has served as the president of AstenJohnson since 1996. He has been employed by AstenJohnson in the following capacities since 1972: chairman/president/CEO (1989-1996), president/CEO (1984-1989), vice-president/general manager (1982-1984), sales manager (1975-1982), and plant manager (1972-1975). From 1970-1972, he was employed by Celanese Corporation as a development engineer with synthetic fibers development and manufacturing.

Mr. Finn has served on the Public Service Authority Board of Directors since 2006. He is the current First Vice-Chairman. He currently serves on the following committees: (1) Central/Santee Cooper Executive Committee; (2) Audit Committee; (3) Executive-Corporate Planning Committee; and (4) Human Resources Committee, on which he has served as the chairman since January 2007.

He has served on the Advisory Board of IFA Rotorion since 2011. Mr. Finn has served as a board member with the Seaman Corporation since 1997. He has also served as lead director and board member of the SWM International since 1995.

#### 5) Statutory Requirements

Pursuant to Section 58-31-20, the Review Committee is required to determine if Mr. Finn 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, and 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. Finn's responses to written and oral questions reflect he has working knowledge of the operations and activities of Santee Cooper. His participation on the board during his tenure indicates that not only does he meet the statutory qualifications to serve, but also his commitment to serve on the board.

#### 6) Knowledge of Current Energy Issues

Mr. Finn understands and appreciates the challenges faced by Santee Cooper resulting from the effect of the economy and its impact on generation costs, and demand for electricity, the shift from traditional coal powered generation, and the difficulties these present for long-term planning. He discussed the issues facing Santee Cooper in regards to its coal plants, construction of the nuclear units at V.C. Summer, its energy efficiency programs, and ways a utility should make long-term plans during a period of change. See Tr. pages 7-26, 40-43.

#### 7) Knowledge of Santee Cooper's Other Roles

Mr. Finn is knowledgeable about Santee Cooper's various roles, including economic development. He stated:

Santee Cooper is at a unique ability to really help ensure that the Department of Commerce brings great companies to South Carolina.

We have resources, we have lending capacity that we use, we are--also helping rural communities build spec building to attract industry to some of these communities... one of the key roles of Santee Cooper is to active statewide in economic development. Tr., p. 26. l. 9-17

Mr. Finn also stated that Santee Cooper is “committed to keeping the lakes as a core prime recreational facility for the state of South Carolina.” Tr., p 28, l. 13-15.

8) Independence

Mr. Finn stated he did not believe a director’s ideological or political beliefs should play a role in making a decision. See Tr. pg. 31, lines 3-6.

Findings as to Overall Qualification

Mr. Finn has been nominated to be reappointed as the director representing the First Congressional District on the Board of Directors of Santee Cooper. The Review Committee believes Mr. Finn possesses the depth of experience to enable him to continue to be a successful member of the Santee Cooper Board of Directors and finds him qualified.

**W. LEIGHTON LORD, III**  
**Santee Cooper Board of Directors**  
SEAT: CHAIRMAN, AT-LARGE  
TERM: MAY 19, 2011, THROUGH MAY 20, 2018

**Review Committee's Findings: Qualified**

1) Constitutional and Statutory Qualifications

Mr. Lord meets the general qualifications prescribed by law for service as a Director of Santee Cooper. Mr. Lord is a resident of Columbia, South Carolina. Mr. Lord has been a resident of South Carolina for at least the immediate past five years and is a qualified elector of this State.

2) Educational Background

Mr. Lord received an undergraduate degree from University of Delaware in 1986 and received a Juris Doctor from Vanderbilt University 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) Professional Experience and Training

Mr. Lord has been a partner of Nexsen Pruet since 1994. He served as counsel to the United States Senate Subcommittee and Investigations from 1991-1993. He was an associate with Ashby & Geddes from 1990-1991 and was a law clerk with the Delaware Chancery Court from 1989-1990.

Mr. Lord has served on the Public Service Authority Board of Directors since 2009. He serves on the following committees: (1) Central/Santee Cooper Executive Committee; (2) Human Resources Committee; (3) Legal Affairs Committee; and (4) Property Committee, on which he has served as the chairman since August 2011.

5) Statutory Requirements

Pursuant to Section 58-31-20, 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, and 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 reflect he has working knowledge of the operations and activities of Santee Cooper. His participation on the board during his tenure indicates that not only does he meet the statutory qualifications to serve, but also his commitment to serve on the board.

6) Knowledge of Current Energy Issues

Mr. Lord understands and appreciates the challenges faced by Santee Cooper resulting from the effect of the economy and its impact on generation costs, and demand for electricity, the shift from traditional coal powered generation, and the difficulties these present for long-term planning. See Tr., p. 53-66. He believes the top three issues facing Santee Cooper and its current generation mix are: (1) retiring coal plants; (2) dealing with additional regulation by the federal government; and (3) economic development. See Tr. beginning p. 73, l. 15.

7) Knowledge of Santee Cooper's Other Roles

Mr. Lord is knowledgeable about Santee Cooper's various roles, including economic development. He stated:

We want to give jobs and opportunities to people in our service area which we believe is part of our mission of making lives of South Carolinians better. We do it through active recruiting of businesses...

One of the things that we're trying to actively do is make sure there are places for industry to go. Tr. p. 79, l. 14-25

Mr. Lord also briefly spoke about ways in which Santee Cooper works to contribute to economic development in South Carolina, such as having its own economic development professional, its partnership with Palmetto Economic Development Corporation, and cooperation with local government and cooperatives. See Tr. p. 78-80.

8) Independence

Mr. Lord stated he did not believe a director's ideological or political beliefs should play a role in making a decision. See Tr. p. 79, l. 17-20.



#### Findings as to Overall Qualification

Mr. Lord has been nominated to be appointed as the Chairman of 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 Chairman of the Santee Cooper Board of Directors and the Review Committee finds him qualified.