

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: November 13, 2015

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

On or around April 14, 2015, the Governor submitted the name of Peggy H. Pinnell as a candidate for the Senate's consideration for reappointment to the Board of Directors of the South Carolina Public Service Authority (Santee Cooper), Berkley County seat. The appointment was referred to the Senate Judiciary Committee.

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.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.

The Santee Cooper Screening Subcommittee of the Review Committee sent Mrs. Pinnell a set of questions tailored to a candidate who is a sitting director. Her responses are attached to this report. Mrs. Pinnell appeared before the Subcommittee on June 2, 2015 and answered further questions from the Subcommittee on those issues and others. The transcript of the hearing is appended to this report by reference. The transcript is posted online at <http://www.scstatehouse.gov/committeefinfo/PublicUtilitiesReviewComm/PublicUtilitiesReviewComm.php>.

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.

The Committee met on October 27, 2015 to consider the Subcommittee's report and to make a determination as to Mrs. Pinnell's qualifications.

PEGGY H. PINNELL
SANTEE COOPER BOARD OF DIRECTORS
SEAT: BERKLEY COUNTY
TERM: MAY 19, 2014 THROUGH MAY 19, 2021

Review Committee's Findings: Qualified

1) Constitutional and Statutory Qualifications

Mrs. Pinnell meets the general qualifications prescribed by law for service as a Director for Santee Cooper. Mrs. Pinnell is a resident of Monks Corner, South Carolina. She 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

Mrs. Pinnell obtained a Bachelors of Science from Baptist College (Charleston Southern University) in 1970. She obtained a Masters in Education in 1976 and a Specialist in Education degree from the Citadel in 1980. She holds insurance licenses in the following: Property & Casualty; Life & Health; Marine; Series 6; and Series 63.

3) Ethical Fitness, Character, and Reputation

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

4) Professional Experience and Training

Mrs. Pinnell is the President of Peggy H. Pinnell Insurance Agency, and has been an independent contractor agent with State Farm since 1982.

Mrs. Pinnell has served as a director on the Santee Cooper Board of Directors since May, 2009.

5) Statutory Requirements

Pursuant to Section 58-31-20(C), the Review Committee is required to determine if Mrs. 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, 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.

Mrs. Pinnell's responses to written and oral questions reflect she has working knowledge of the operations and activities of Santee Cooper. She is the current chair of the Audit Committee, and also serves on Executive-Corporate Planning Committee, Central-Santee Cooper Executive Committee, Human Resources Committee, and Lake Moultrie Water Agency Advisory Board. Her service with Senate Cooper indicates that not only does she meet the statutory qualifications to serve, but also her commitment to serve on the board.

6) Knowledge of Current Energy Issues

Mrs. Pinnell understands and appreciates the challenges faced by Santee Cooper. She discussed the issues facing Santee Cooper, including the difficulties in planning for future electric generation in a period of uncertain federal regulation and price shifts. *See Generally Tr. pgs. 6-13, 18-19*

Mrs. Pinnell also discussed the difficulties of balancing the costs incurred by Santee Cooper for regulatory changes with the ability of the consumers to pay for those costs. She briefly discussed a rate increase considered in 2012, which was not enacted, due in part, to the utility cutting costs as much as possible. *See Generally Tr. pgs. 13-15*. She recognized the impact increased costs could have on a consumer, stating "I don't know how Santee Cooper could be true to its mission of improving the quality of life to the people of South Carolina if they have to spend all the money they have on electricity..." *Tr. p. 15, l. 10-13*. However, she also understands that this mission must be balanced with the utility's need to remain "financially stable." *Tr. p. 14, l. 5*.

7) Knowledge of Santee Cooper's Other Roles

Mrs. Pinnell is knowledgeable about Santee Cooper's various roles, including economic development and lake management. *See Generally Tr. p. 15-17, 19*. As for Santee Cooper moving forward in economic development, she mentioned the Volvo plant in Berkeley County, as well as funds designated for economic development, such as site readiness. *See Tr p. 15-16*.

8) Independence

Mrs. Pinnell stated that as a director, her duty is "not doing anything in my own self interest

but instead doing what's needed for the stakeholders, all of them.” *Tr. pg. 24, lines 1-3*

Findings as to Overall Qualification

Mrs. Pinnell has been nominated to be reappointed as a director representing Berkeley County on the Board of Directors of Santee Cooper. The Review Committee believes Mrs. Pinnell possesses the depth of experience to enable her to be a successful member of the Santee Cooper Board of Directors and finds her qualified.