

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

City of Seneca, South Carolina,
City of Westminster, South Carolina, and
County of Oconee, South Carolina

Plaintiffs,

vs.

Pioneer Rural Water District of Oconee and
Anderson Counties,

Defendant.

Pioneer Rural Water District of Oconee and
Anderson Counties,

Third-Party Plaintiff,

vs.

Oconee Joint Regional Sewer Authority,

Third-Party Defendant.

CASE NO.: 2017-CP-37-00187

AFFIDAVIT OF TERRY L. PRUITT

Terry L. Pruitt, being duly sworn, says as follows:

1. My name is Terry L. Pruitt. I am over the age of eighteen and otherwise competent to make this affidavit. Except as expressly indicated otherwise, this affidavit is based on my personal knowledge.

2. I am the General Manager for Pioneer Rural Water District of Oconee and Anderson Counties ("Pioneer"). I have been in this position for 11 years.

3. Pioneer is a special purpose, rural water district that supplies the water needs of approximately 7,000 customers in southern Oconee County and Northwestern Anderson County. Its approximately 130 square mile service area is bounded on the north by Westminster and

Seneca, on the east and south by Coneross Creek and Lake Hartwell, Choestra Creek, and Highway 20.

4. Pioneer's enabling act, S.C. Code Ann. §§ 6-13-210 *et seq.* (the "Act") provides that "[i]t shall be the purpose and function of [Pioneer] to acquire, construct and operate a waterworks system, utilizing therefor water from available sources, by purchase or otherwise." S.C. Code Ann. § 6-13-210. While the Act describes some of the machinery, equipment, and components required for a waterworks system, it does not include anything close to an exhaustive list of all that is needed for an operational waterworks system. By way of some examples, the Act says nothing about the following essential components of a waterworks system, but Pioneer and any other operator of a waterworks system certainly needs the following assets and equipment to function:

- a. Administrative buildings and offices;
- b. Computers, telephones, and billing and accounting software;
- c. Pump stations to pressurize the system and push water to consumers;
- d. Sample stations throughout the system to allow for monitoring;
- e. Flushing stations to clear out the lines as needed; and
- f. Trucks, dump trucks, backhoes, and other machinery and equipment to keep the waterworks system operational.

5. Pioneer, which provides water to much of southern Oconee County, has purchased water on the wholesale market to meet the needs of its customers since its inception in 1965. Its main suppliers have been Westminster, from which it began purchasing water in 1965, and Seneca, from which it has purchased water since 1987. Currently, about 60% of Pioneer's water

is supplied from the waterworks system of Seneca, and about 40% is supplied from the waterworks system of Westminster.

6. Because Pioneer purchases its water from Seneca and Westminster, it is subject to price increases whenever Seneca and/or Westminster decide to raise prices.

7. Pioneer's customers have been subjected to substantial increases in water prices charged by Seneca and Westminster between 2008 and 2012, including an indefensible 174 percent rate overall increase by Westminster, which included a 30% increase (from \$1.81 to \$2.36 per thousand gallons) in June 2012. The average annual increase in water prices charged to Pioneer by Seneca and Westminster has been 4.55 percent for the period between 2003 and 2017.

8. Because Pioneer no longer wanted to be subjected to arbitrary price increases by Seneca and Westminster, in or around 2007 Pioneer began exploring alternative means for providing water to its customers at fair and reasonable prices.

9. Pioneer engaged an engineering firm, Design South Professionals, Inc. ("Design South"), to conduct a feasibility study for the construction of a water treatment facility to be added to the Pioneer waterworks system ("the Facility"), and it received its first feasibility study back from Design South on or about October 31, 2007.

10. Once Pioneer had this feasibility study, it began to work on plans to construct the Facility, and the plan to build the Facility has been the subject of public meetings since 2008, including requests for public input to the Army Corps of Engineers.

11. Oconee County, the City of Seneca, and the City of Westminster have each been aware of the plans for and work on the Facility from at least as early as the public meetings held in 2008. In fact, before or shortly after work began on plans for the Facility, I went to both the

City of Seneca and the City of Westminster and asked them to negotiate lower water rates in the hopes of avoiding the need to proceed with plans to construct the Facility at all. Neither would commit to lower rates.

12. On or about December 21, 2010, Pioneer purchased approximately fourteen acres of property located on Tugaloo Drive in Fair Play, South Carolina for the purpose of locating the Facility there.

13. On or about December 22, 2010, Pioneer purchased another lot in the Edgewater subdivision in Fair Play, South Carolina, for the purpose of locating a pump station for the Facility.

14. The original plan to build the Facility in Fair Play, South Carolina met with resistance from local residents.

15. In late 2011, in light of the resistance of local residents, Pioneer began a feasibility study to determine whether it could relocate the Facility to be constructed within the Golden Corner Commerce Park in southern Oconee County (“Commerce Park”). Pioneer again retained Design South to conduct this feasibility study.

16. Design South was also retained by Pioneer to prepare the site design plans and specifications for the Facility, and Design South submitted those plans and specifications as part of a construction permit application to the South Carolina Department of Health and Environmental Control (“DHEC”) for review and approval.

17. DHEC issued its original construction permit based on the Design South plans for the Facility in about July 2012.

18. In about June 2012, the enabling statute creating Pioneer was amended to require that, before Pioneer invested in any new facility or took other action that obligated Pioneer for

one million dollars or more, Pioneer had to provide an independent audit by an accounting firm, including the potential impact of the action on Pioneer's ratepayers, and present the same at a public meeting. The audit was required to be verified by the South Carolina Office of Regulatory Staff ("ORS"). S.C. Code Ann. §§ 6-13-240(B) and (C). This amendment had no immediate impact on plans for the Facility, for Pioneer had not taken any action obligating it for one million dollars or more at that point in time.

19. In an effort to promote the Facility and mediate tensions between Pioneer and the local residents in Fair Play over the location of the Facility, Oconee County offered Pioneer a 25-acre tract of land in the Commerce Park for \$132,000 as an alternate location for the construction of the Facility.

20. In September of 2012, Pioneer's Board of Directors voted unanimously to accept the County's offer and made plans to relocate the Facility to the Commerce Park.

21. Prior to March 2013, Pioneer engaged a Seneca accounting firm to conduct the independent audit concerning the Facility, and that audit was presented at a public meeting in March 2013.

22. The independent audit conducted by the Seneca accounting firm and presented at the March 2013 Pioneer board meeting demonstrated that Pioneer would save nearly \$6 million in future water costs by building a waterworks facility that drew water out of Lake Hartwell instead of continuing to purchase water at wholesale from Seneca and Westminster.

23. By a report issued on April 10, 2013, the independent audit concerning the Facility was verified by ORS, as required by the 2012 amendment to Pioneer's enabling legislation. A true and correct copy of the April 10, 2013 ORS report is attached as Exhibit D to Pioneer's Answer, Counterclaims, and Third-Party Complaint ("Pioneer Answer").

24. In connection with its new plans to move the Facility to the Commerce Park, Pioneer amended its requests for permits to DHEC, performed a new survey, and took other steps to prepare to relocate construction of its proposed Facility to the new location. Pioneer also continued the process of seeking long-term funding for the Facility through the U.S. Department of Agriculture.

25. In or about June 2013, Oconee County tabled the final decision on whether to sell Pioneer property within the Commerce Park for a price of \$132,000, but indicated its continued support for the Facility, and that deal ultimately fell through.

26. In or about July of 2014, Oconee County offered to donate to Pioneer an approximately 70-acre parcel adjoining the Commerce Park on the other side of Cleveland Creek for use in constructing the Facility. Oconee County was aware of Pioneer's purpose of constructing the Facility.

27. On information and belief, this offer to donate the property was made because Oconee County recognized that that the property was otherwise unmarketable because of the location of wetlands on the property, and because Oconee County understood that it had caused Pioneer to invest substantial time and money in revising its plans to relocate the Facility to the Commerce Park in reliance on Oconee County's original agreement to sell a parcel within the Commerce Park to Pioneer. This offer was reported in online articles in *UpstateToday* dated July 26, 2014 and August 22, 2014, true and correct copies of which are attached as Exhibit F to the Pioneer Answer.

28. Pioneer accepted Oconee County's offer to donate the 70-acre parcel and, once again, invested money and time in revising plans so that it could relocate its Facility to suit the needs of others, including Oconee County.

29. At a public meeting in August 2014, Oconee County Council voted unanimously to approve the conveyance of the property to Pioneer, and the deal was finalized by unanimous vote at the Oconee County Council meeting of September 16, 2014. A true and correct copy of the Oconee County Council minutes for the September 2014 meeting are attached as Exhibit G to the Pioneer Answer.

30. After Oconee provided Pioneer with a new site in 2014 upon which to build the Facility, Design South submitted revised site design plans and specifications to DHEC based on the new location, along with a revised construction permit application.

31. On or about December 10, 2015, DHEC approved the construction permit based on the revised site design plans and specifications. A true and correct copy of the approval document is attached as Exhibit H to the Pioneer Answer.

32. Included in the site design plans and specifications approved by DHEC on or about December 20, 2015 were the plans for a septic system to handle the wastewater generated from the Facility. The septic system for the Facility is needed to handle the wastewater for a total of two toilets/bathrooms for the Facility – and has nothing to do with the water treatment process. A true and correct copy of the portion of the site design plans that includes the proposed septic system design is attached as Exhibit I to the Pioneer Answer.

33. On or about November 1, 2016, Oconee County Administrator Scott Moulder praised the Facility in the press, saying “[a]s water is a necessity for life, it’s obviously beneficial for customers within [Pioneer’s] service territory to have a new and modern facility for water treatment,” and “[t]he county also sees an upgrade in infrastructure to new technology as a benefit to our ability to recruit commercial and industrial development, as this allows us to

highlight ample water capacity in the I-85 territory.” A true and correct copy of the article quoting Mr. Moulder is attached as Exhibit K to the Pioneer Answer.

34. Relying on the deal from Oconee County to relocate the Facility, Pioneer paid the independent Seneca accounting firm for an updated audit of the cost-benefit analysis for its project at the new location, the results of which were submitted to ORS in December 2016, and presented at a public meeting in January 2017. The independent audit showed that millions of dollars would be saved – for the benefit of both Pioneer and its rate-paying customers – if it proceeded with plans for the Facility. Contrary to the position taken by the Plaintiffs in this litigation, the audit confirms that the construction of the Facility will result in lower water prices for Pioneer customers than if the Facility is not built.

35. By its report issued on January 19, 2017, the second independent audit concerning the Facility was verified by ORS. A true and correct copy of the January 19, 2017 ORS report is attached as Exhibit L to the Pioneer Answer. That report reached the same conclusion as the ORS report from April 2013. Pioneer has thus complied with the provision added to the Act concerning million-dollar projects.

36. Pioneer has arranged for interim construction financing for the Facility through CoBank, and long-term financing for the Facility through a loan from the United States Department of Agriculture at a very low (2.75%) rate for the construction of the Facility, as well as \$500,000 in grant money from the Appalachian Regional Commission for the project. All of these financing arrangements have been publicly announced.

37. On or about November 1, 2016, Pioneer entered into a contract with The Harper Corporation (“Harper”) for the construction of the Facility. The currently projected completion date for the Facility is approximately August 21, 2018.

38. As part of its contract with Pioneer, on or about February 8, 2017, Harper submitted a building permit application for the Facility to Oconee County pursuant to Oconee County Ordinance Section 6-82.

39. Pioneer had been advised that the Oconee County building officials have reviewed and approved the building permit application for all trades, but have given one reason why the building permit has not issued yet: Oconee County claims it is awaiting an approval letter from the Oconee Joint Regional Sewer Authority (“OJRSA”) in order to issue the building permit.

40. It is my understanding that OJRSA takes the position that the design for the Facility should include connecting its two toilet facilities into the public sewer, rather than installing a septic system on site.

41. On or about March 14, 2017, Oconee County Administrator Scott Moulder advised me that, as a political matter, he needs to be able to tell Oconee County that he required Pioneer to connect to the public sewer that cost Oconee County several million dollars to construct, and that he could not have any entity in the Oconee economic development park that was not connected to the public sewer.

42. The statements by Mr. Moulder are not only incorrect (based on the agreement by Oconee County to donate property to Pioneer to encourage and convince Pioneer to construct the Facility outside the park in the first place), but they confirm my opinion that the refusal of OJRSA to allow the Facility to proceed with a septic system is a sham created purely for political purposes.

43. In addition to the admission by Mr. Moulder set forth above, Bob Faires, one of Seneca’s representatives on the OJRSA, attended a Pioneer board meeting on March 7, 2017 and advised the Pioneer board, in open session, that the Mayor of the City of Seneca would not let

him release a sewer approval letter (i.e., a letter from OJRSA confirming the appropriateness of the DHEC-approved septic system for the Facility) because of politics.

44. Mr. Faires also advised the Pioneer board that he thought it would be “crazy” to connect the Facility to the public sewer anyway, because it would take so long and be so expensive to pump the limited amount of sewage expected from the Facility up to the OJRSA sewage treatment plant, several miles away.

45. On March 31, 2017, Oconee County Council held a special meeting and the Facility was part of the discussion at that meeting. A true and correct copy of the minutes of this special meeting, as found on the Oconee County Council website, is attached as Exhibit M to the Pioneer Answer.

46. In the minutes of the special meeting, Oconee County expressly admits that it has no legal basis to withhold approval of the building permit:

[Oconee County Attorney] Mr. Root updated Council on other issues relative to staff’s investigation of Pioneer Rural Water District’s construction of the water plant. He stated that during the last special meeting on this issue, **staff was instructed to investigate all means possible to enjoin or stop the construction of the water treatment facility.** This lawsuit is one of the avenues that is being pursued, and others continue to be under review. **He noted that research regarding the issuance or non-issuance of the building permit revealed no legal basis for Council to direct non-issuance,** that it was an administrative decision for the Planning Department to make. [Emphasis added].

47. I am not aware of any requirement that a separate application for approval of the septic system for the Facility be submitted to OJRSA, and I am not aware of any requirement that the Facility connect to the public sewer, which is more than 300 feet away from the Facility.

48. In order for Pioneer to design for and connect the toilet facilities at the Facility to the public sewer, it would require a substantial and costly delay in construction of the Facility in order to design, engineer, and install the proper lines to make the connection. I have been

advised by Harper, the contractor for the project, that if it is forced to suspend construction work on the Facility for 90-days, it expects such a suspension will result in an estimated \$2.721 million in charges to Pioneer. Delay could also inflict other costs on Pioneer, including disrupting funding for the Project and requiring rebidding of element of the project.

49. The analyses performed in deciding to construct the Facility indicate the Facility will result in savings to Pioneer's water customers through lower prices in the long term. By contrast, if these Plaintiffs were to succeed in suspending or terminating construction of the Facility, Pioneer would face substantial delay costs. Any injunction stopping work on the Facility will result in price increases to Pioneer customers, not cost savings as Plaintiffs claim.


50. To date, Pioneer has paid over \$3 million in costs associated with land acquisition, design and engineering work, permitting requirements, and other costs relating to the Facility. In addition, payments to Harper under the construction contract for the Facility have amounted to over \$3.4 million, in two separate pay applications that were approved by the U.S. Department of Agriculture and paid by CoBank as part of its construction financing.

51. Pioneer is entitled to the building permit for the Facility that Oconee County is arbitrarily and unreasonably withholding, based on an abuse of discretion, for political reasons.

52. Oconee County's withholding of the building permit for the Facility is causing and will cause substantial damages and irreparable harm to Pioneer, including millions of dollars in charges that will result from any delay in the construction of the Facility or termination of the contract for construction of the Facility that results from the improper refusal to issue the permit.

53. Pioneer has no other legal recourse than to seek court intervention to force Oconee County to issue the building permit for the Facility.

Further affiant sayeth not.


Terry L. Pruitt

SWORN TO AND SUBSCRIBED before
me this the 5th day of May, 2017.


Paula C. Oliver

Notary Public for South Carolina

My Commission Expires: June 28, 2026