

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) CASE NO.: 2017-CP-37-00187

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

Plaintiffs,

v.

Pioneer Rural Water District of Oconee and
Anderson Counties,

Defendant.

AMENDED COMPLAINT

Pioneer Rural Water District of Oconee and
Anderson Counties,

Third-Party Plaintiff,

v.

Oconee Joint Regional Sewer Authority,

Third-Party Defendant.

Plaintiffs, City of Seneca, South Carolina (“Seneca”), City of Westminster, South Carolina (“Westminster”), and Oconee County, South Carolina (“County”) complaining of Defendant, hereby submit their Amended Complaint as set forth below:

Nature of the Action

1. This is an action to determine whether Pioneer Rural Water District of Oconee and Anderson Counties (“Pioneer”), has the authority, in accordance with its enabling statute, to construct and operate a water treatment facility. This action further seeks an injunction against Pioneer’s constructing and operating a water treatment facility.

Jurisdiction

2. Seneca is an incorporated municipality of the State of South Carolina located in Oconee County, South Carolina.
3. Westminster is an incorporated municipality of the State of South Carolina located in Oconee County, South Carolina.
4. County is a body politic and corporate and a political subdivision of the State of South Carolina.
5. Pioneer is a body politic and corporate of the State of South Carolina created pursuant to Act No. 371, 1965 S.C. Acts 667, codified at S.C. Code § 6-13-210, *et seq.* (2012). Pioneer's service area is located, in part, in Oconee County, South Carolina.
6. This matter involves the interpretation and application of the laws of the State of South Carolina.
7. Based upon the foregoing, this Court has jurisdiction over the subject matter and the parties to this action, and venue is proper in this Court.

Facts

8. As set forth in S.C. Code Ann. § 6-13-210, the purpose and function of Pioneer is:

to acquire, construct, and operate a waterworks system, utilizing therefor water from available sources, by purchase or otherwise, at such convenient points as the district shall select to provide a flow of water through pipes to the areas described in Section 6-13-220, and to such other domestic, commercial or industrial users who can be conveniently and economically served within or without the service area as herein provided. (emphasis added).
9. Seneca and Westminster are two of the "available sources" from which Pioneer presently purchases water to distribute throughout Pioneer's service area.

10. Seneca and County are also customers of Pioneer and, therefore, have an interest in Pioneer's cost in distributing water to its customers.

11. County also has a direct interest in the subject matter of this litigation by virtue of ongoing economic development endeavors.

12. In a letter dated April 30, 2012, the Attorney General of the State of South Carolina issued an opinion providing that Pioneer's enabling statute, quoted in part above, does not allow Pioneer to construct and operate a water treatment facility, in addition or as opposed to purchasing or otherwise acquiring water from another source, unless building and operating such a treatment facility were necessary to Pioneer's water distribution function.

13. The Attorney General confirmed the 2012 opinion by way of an opinion issued April 13, 2017.

14. Despite the wording of the statute and the existence of the Attorney General's opinions, Pioneer is proceeding with construction of a water treatment facility which is beyond its statutory authority.

15. S.C. Code Ann. § 6-13-240(B) requires that before the board of Pioneer makes an investment in a facility or any other action that obligates the water district for one million dollars or more, it must provide for an independent audit as set forth in the statute.

16. The audit, which must include the potential impact of the board's action on its ratepayers, must be presented to the district's customers at a meeting prior to entering into the action prompting the audit. Furthermore, notice of that meeting must be provided to the customers of the district as set forth in the statute.

17. Prior, to that meeting, and within thirty (30) days of receiving the audit, and prior to its presentation to the customers, the board must submit the audit to the Office of Regulatory Staff to verify the audit's assumptions.

18. In violation of that statute, Pioneer entered into a construction contract with The Harper Corporation on or about November 16, 2016 for a contract price of \$17,050,000.00, obligating the water district for well more than one million dollars. The audit, however, purporting to show the potential impact on the ratepayers, was prepared as of December 9, 2016.

19. Therefore, the contract between Pioneer and The Harper Corporation was entered into prior to the audit having been performed and prior to its presentation to Pioneer's customers.

20. Furthermore, the audit performed in 2016 is based upon misinformation, and therefore, does not accurately state the impact of Pioneer's actions upon its ratepayers.

21. S.C. Code § 6-13-240(D) provides that any action taken by the board must be made in the ratepayers' best interests. Best interests must include consideration of, but not limited to, the public interest of the ratepayers, financial integrity of the water district, and economic development of the area to be provided with service by the water district.

22. Building the water treatment plant is not in the best interest of the ratepayers.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment - Injunction)

23. The foregoing paragraphs of this Amended Complaint are incorporated herein to the extent not inconsistent herewith.

24. Plaintiffs herein contend, in accordance with the Attorney General's opinions and S.C. Code Ann. § 6-13-210, *et seq.* that Pioneer does not have the authority to construct and operate a water treatment plant because sufficient water is available to Pioneer from other sources.

25. Plaintiffs further contend that Pioneer's contract with The Harper Corporation is *ultra vires* because Pioneer did not follow the requirements of S.C. Code Ann. § 6-13-240.

26. Plaintiffs further contend that Pioneer may not proceed with construction of the water treatment plant because it is not in the best interest of the ratepayers.

27. Pioneer's construction and operation of a water treatment plant in violation of South Carolina law will adversely impact Seneca and Westminster's revenues from the sale of water and will adversely impact the cost of water to Pioneer's customers.

28. Therefore, an actual justiciable controversy exists subject to S.C. Code Ann. § 15-53-10, *et seq.*

29. Pursuant to S.C. Code Ann § 15-53-20, Plaintiffs pray for a declaratory judgment that Pioneer is not entitled to construct and operate a water treatment facility, and enjoining Pioneer from undertaking to construct and operate such a facility.

WHEREFORE, Plaintiffs pray that the relief requested herein be granted, that they be awarded attorney fees, if available, and the costs of this action, and for such other and further relief as this Court deems just and proper.

Dated: May 26, 2017

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