

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.

CASE NO.: 2017-CP-37-00187

**THIRD 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”) declares that Pioneer is a body corporate and politic. Pioneer is subject to the requirements of South Carolina’s Freedom of Information Act (“FOIA”). Pioneer is governed by an elected Board.

Under the Act, the electors of the Board are all individuals. None of the Plaintiffs in this lawsuit is authorized to vote for Pioneer's Board; nor do these Plaintiffs have any other role in Pioneer's governance or decision making.

5. 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.

6. 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.

7. Pioneer does not have the right to levy taxes, and it does not receive tax revenues from any source. Pioneer's primary source of revenue is the sale of water to customers.

8. Because Pioneer purchases its water from Seneca and Westminster, it is subject to price increases whenever Seneca and/or Westminster decide to raise prices. The prices charged to Pioneer by Seneca and Westminster are not regulated.

9. Pioneer faces additional risk if it is limited to purchasing water from Seneca and Westminster. Neither has any obligation to ensure that all of Pioneer's water needs are met. True and correct copies of those last contracts are attached hereto as Exhibits A and B. These contracts have never been terminated by the parties.

10. For example, Pioneer's contract with Seneca allows Seneca to interrupt or suspend water service without liability for any cause beyond its control and may discontinue water service "during a fire in the City of Seneca." Exhibit A, at ¶¶ 11, 12. The Westminster contract contains a provision that simply says, "[t]emporary or partial failures to deliver water shall be remedied with all possible dispatch," and allows Westminster to reduce water supply to Pioneer "[i]n the event of extended shortage of water" without penalty. Ex. B, at ¶ C2.

11. Westminster's system is old, and Pioneer depends on a Westminster pump station that has failed on occasion, and the reliability of Westminster's intake pump is also questionable (it has failed twice in the last month and on other occasions in the past). These failures left Pioneer without any water coming from Westminster for short periods of time. The Westminster contract implicitly recognizes that improvements to the pump station that serves Pioneer have to be made, and the contract gives Westminster the right to pass on to Pioneer any cost associated

with replacement of the pump station that currently serves Pioneer: “In the event that it becomes necessary to modify or replace the pump station supplying water to Pioneer [] an amortized cost will be passed on to [Pioneer] to begin upon completion of such change.” Ex. B, at ¶ C2.

12. Pioneer’s customers have been subjected to substantial increases in water prices charged by Seneca and Westminster between 2008 and 2012, including 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, as shown on Exhibit C.

13. Because Pioneer no longer wanted to be subjected to arbitrary price increases by Seneca and Westminster, or at risk for an interruption in service, in or around 2007 Pioneer’s Board directed that Pioneer began exploring alternative means for providing water to its customers at fair and reasonable prices.

14. 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.

15. Upon receipt of this Design South study, Pioneer’s Board exercised its discretion at its November 6, 2007 public meeting to authorize me to negotiate with Design South for a professional engineering review for the Facility, the next step in the process.

16. Thereafter, Pioneer 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.

17. Oconee County (“Oconee”), the City of Seneca (“Seneca”), and the City of Westminster (“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 Seneca and Westminster and told them about our feasibility study. I asked them to negotiate lower water rates in the hopes of avoiding the need to proceed with plans to construct the Facility at all, and had other discussions about Seneca and Westminster supplying water to Pioneer to cover peak demand even after the Facility was built. These discussions continued on and off for several years. An example that confirms my discussions with Seneca about negotiating lower rates to avoid the need for constructing the Facility comes in an article in the Seneca Journal in June 2011, where Bob Faires, the Utilities Director for Seneca, is quoted in the paper talking about our discussions and his knowledge of the Facility. A copy of this article is attached as Ex. D. Unfortunately, neither Seneca nor Westminster would commit to lower rates sufficiently to change the analysis on the feasibility of proceeding with the Facility.

18. At the January 5, 2010 meeting of Pioneer’s Board, the Board passed Resolution 2010-01-05 to move forward with the Facility. At the time, the initial next steps were anticipated to include planning and design, permitting, arranging financing, and land acquisition

19. 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.

20. 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.

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

22. In March 2011, Oconee County offered to sell Pioneer property within the Golden Corner Commerce Park in southern Oconee County (“Commerce Park”) if it were feasible for the Facility. 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 Commerce Park. Pioneer again retained Design South to conduct this feasibility study.

23. 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.

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

25. 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 offered Pioneer a roughly 25-acre tract of land in the Commerce Park for \$132,000 as an alternate location for the construction of the Facility. Oconee County Council passed Ordinance 2013-07 authorizing this sale, and executed a proposed contract for the sale. True and correct copies of the ordinance and proposed contract are attached hereto collectively as Exhibit E. Oconee sent me a copy of the proposed agreement by letter dated July 18, 2013. A true and correct copy of this letter is attached as Exhibit F.

26. In September of 2012, Pioneer's Board of Directors exercised its discretion by voting unanimously in a public meeting to accept the County's offer and made plans to relocate the Facility to the Commerce Park.

27. 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.

28. 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.

29. In or about July of 2014, Oconee County offered to donate to Pioneer (for a price of Ten Dollars) an approximately 60-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.

30. 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 hereto collectively as Exhibit G.

31. Pioneer accepted Oconee County's offer to donate the 60-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.

32. After three readings in public meetings, Oconee passed an Ordinance in September 2014 approving the transfer of the approximately 60 acres of property where the Facility is now under construction. (Oconee Ordinance 2014-21; a true copy is attached hereto as Exhibit H, without its exhibits). Oconee and Pioneer then entered into a contract for that transfer. A true copy is attached hereto as Exhibit I. The contract is noteworthy because Oconee extracted a contractual *commitment* from Pioneer to build the Facility. The contract goes on affirm that Pioneer's promise to construct the Facility was "a material term of this Agreement and a material inducement" to conveyance of the property, and Oconee *reserved the right to collect attorney's fees if it had to sue Pioneer to compel it to build the Facility*.

33. This transfer of property has now taken place, and Pioneer is the sole owner of the site of the Facility. None of the Plaintiffs has any ownership interest in the Facility or the land on which it is being constructed.

34. At the time Oconee contributed this property to Pioneer, neither I nor – to the best of my knowledge – anyone else at Pioneer had any idea that Oconee would later sue to stop the Facility. Pioneer was justified in relying on Oconee's duly enacted ordinance, and did rely by planning, designing, and starting construction of the Facility on that property.

35. 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.



36. 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 Ex. J hereto.

37. On information and belief, 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 Ex. K hereto.

38. Part of the reason Oconee was actively in support of the construction of the Facility was because Oconee wanted to secure an “Industrial Park” certification for its Golden Corner Commerce Park (the “Commerce Park”) in southern Oconee County, which lies within Pioneer’s service area for water. Oconee had to submit information to the South Carolina Department of Commerce (“SCDOC”) in support of its application for certification of the Commerce Park, and Oconee requested Pioneer to provide various submissions to SCDOC as part of this application process.

39. As part of the process for certification of the Commerce Park, Oconee submitted applications to the SCDOC in which it certified that the Commerce Park would be serviced by Pioneer as its water service provider, and that Pioneer had a water treatment plant expected to come on line for the Commerce Park in the first quarter of 2015. Letter from Oconee to SCDOC dtd July 26, 2013 is attached as Ex. L hereto.

40. In September 2013, Oconee submitted a more detailed questionnaire to SCDOC in its effort to certify the Commerce Park, and in that document Oconee identified the Facility as part of a planned upgrade to the water service for the Commerce Park, as follows:

Pioneer ... is currently in the process of building a 2.5 MGD Water Treatment Plant, expandable to 5.0 MGD, on a parcel located within the Golden Corner Commerce Park. The project has already been designed and is awaiting approval to move forward with construction. Pending approval to move forward with construction, the schedule is 2 to 4 years.

Oconee Application for Site Certification dated September 12, 2013. A copy is attached as Ex. M hereto.

41. Pioneer supported Oconee's application for Commerce Park site certification by submitting letters concerning the water service available to the Commerce Park. These submissions by Pioneer were done at Oconee's request in order to assist Oconee in obtaining certification. An example is my letter to SCDOC dated September 11, 2013, a copy of which is attached as Ex. N.

42. The Commerce Park obtained Industrial Park certification by SCDOC in August 2015. A copy of a letter from the engineering firm for SCDOC that confirms this certification is attached as Ex. O, and it includes reference to the Facility to be completed within two to four years. A copy of the current printout showing the availability of the Commerce Park as an Industrial Park on the SCDOC website is attached as Ex. P.

43. 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 (an "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 Act requires the South Carolina Office of Regulatory Staff (“ORS”) to verify the assumptions of the Audit. S.C. Code Ann. §§ 6-13-240(B) and (C).

44. Prior to March 2013, Pioneer engaged a Seneca accounting firm to conduct the independent statutory Audit concerning the Facility, and that Audit (the “2013 Audit”) was presented at a public meeting in March 2013.

45. The 2013 Audit concluded 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.

46. The public meeting of March 19, 2013 was held after Pioneer gave public notice, making it clear that the Facility and financing for the Facility would be discussed. A copy of the public notice presented by Pioneer is attached hereto as Exhibit Q.

47. 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, with the cover email that came with it, is attached as Exhibit R hereto.

48. Relying on the deal from Oconee County to relocate the Facility, Pioneer paid the independent Seneca accounting firm for an updated Audit for the Facility at the new location. This update (the “2016 Audit”) was submitted to ORS in December 2016, and presented at a public meeting in January 2017. The 2016 Audit reaffirmed the conclusion that millions of dollars would be saved – for the benefit of both Pioneer and its rate-paying customers – if Pioneer proceeded with the Facility.

49. 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, with the cover email that came with it, is attached as Exhibit S hereto.

50. Starting in 2007 with consideration of the Design South feasibility study, Pioneer's Board has conducted numerous discussions in public meetings of the plan to construct the Facility. In addition to receiving information on the Facility, the Board has passed a number of motions and resolutions in furtherance of this project, including the 2010 resolution to proceed with the project, several votes concerning the acquisition of real property for the Facility, and resolutions in 2013 and 2016 concerning financing. The Board also had the benefit of the information in the 2013 and 2016 Audits prepared by an independent accounting firm. The Board's discussions included the risk of remaining dependent on Seneca and Westminster for water supply, and were at all times focused solely and in good faith on the best interest of Pioneer, its ratepayers, Pioneer's financial integrity, and economic development of Pioneer's service area. Pioneer's Board has consistently, and in public view, exercised its discretion to support and continue with construction of the Facility.

51. Pioneer has arranged for interim construction financing for the Facility through CoBank, and long-term financing for the Facility through financing with 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. Pioneer's financing arrangements have been publicly announced and are the subject of a Resolution passed by Pioneer, a copy of which is attached hereto as Ex. T (without its exhibits). CoBank is serving as interim lender to finance construction of the Facility, and at the end of the

term of the CoBank loan, USDA will succeed CoBank as lender on the project, repaying advances made by CoBank by purchasing bonds issued by Pioneer.

52. In connection with the closing of the CoBank financing, Pioneer obtained an opinion letter from its counsel, Nelson, Mullins, Riley & Scarborough. A true and correct copy of this letter is attached hereto as Exhibit U. Among other things, the letter opined:

The execution and delivery of the Loan Documents by the Borrower [i.e., Pioneer] and the performance by the Borrower of its obligations under the Loan Documents and the consummation by the Borrower of the transaction contemplated thereby have been duly authorized by the Borrower in compliance with the Enabling Legislation [i.e., the Act], and all such authorizations are presently in effect.

The execution and delivery of the Loan Documents by the Borrower and consummation by the Borrower of the transactions contemplated thereby will not (a) violate the Borrower's Creation Legislation, (b) violate any statutory law or regulations of the State applicable to the Borrower in connection with the transaction....

53. 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.

54. The Facility will ultimately be funded by the U.S. Department of Agriculture ("USDA") through its Rural Development program. Because of this, the USDA was heavily involved in overseeing the process of planning and contracting for the construction of the Facility, and USDA placed many conditions on Pioneer concerning the Facility. Among the conditions, USDA required that the loans to finance construction of the Facility "will be evidenced by a waterworks and Sewer System Improvement Bonds secured by a pledge of revenue and a statutory lien on the waterworks and sewer system." An example of this is found in the USDA Letter of Conditions dated September 13, 2016 (attached as Ex. V). Because of the USDA requirements, the Bond Anticipation Note issued by Pioneer defines the Facility as an

improvement to the waterworks system Pioneer is authorized to construct and operate under the Act. (Ex. T).

55. 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.

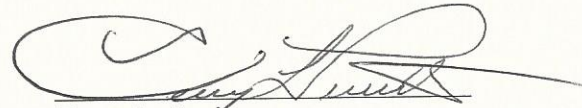
56. Construction on the Facility started on or after January 2, 2017, with the first payment made to Harper Corporation on or about March 24, 2017. By June 14, 2017, Harper Corporation had made three draws in the combined amount of approximately \$3.4 million under the Construction Contract. In addition, Pioneer had also paid over \$3 million in costs associated with land acquisition, design and engineering work, permitting requirements, and other costs relating to the Facility. The Facility is projected to be completed by August 2018.

57. Pioneer has no current plans to construct any water treatment facility other than the Facility, nor can I foresee any circumstance in which Pioneer would need to construct another water treatment facility for a very long time.

58. In my years in the water industry, I have never heard the term "available source" used to mean "treated water."

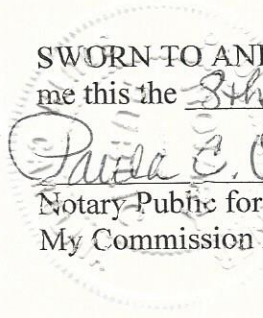
59. The best information available to Pioneer is that it will suffer delay damages of approximately \$2.721 million if forced to suspend construction of the Facility for even a 90-day period, and much more than that if the contract is terminated completely, for Pioneer would be saddled with millions invested in a Facility that would be unusable.

Further affiant sayeth not.



Terry L. Pruitt

SWORN TO AND SUBSCRIBED before  
me this the 3<sup>th</sup> day of Aug, 2017.



Paula C. Oliver  
Notary Public for South Carolina  
My Commission Expires: June 28, 2026