

**STATE OF SOUTH CAROLINA**

**COUNTY OF OCONEE**

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.

**IN THE COURT OF COMMON PLEAS**

CASE NO.: 2017-CP-37-00187

**DEFENDANT PIONEER'S MOTION  
FOR SUMMARY JUDGMENT OR  
PARTIAL SUMMARY JUDGMENT**

Defendant Pioneer Rural Water District of Oconee and Anderson Counties ("Pioneer"), hereby moves, pursuant to Rule 56, SCRCF, for summary judgment against Plaintiffs City of Seneca, South Carolina ("Seneca"), City of Westminster, South Carolina ("Westminster"), and County of Oconee, South Carolina ("Oconee"), (collectively "Defendants").<sup>1</sup> This motion is made on the grounds that there is no genuine issue of material fact to prevent the granting of this motion and Defendant is entitled to judgment as a matter of law. The motion is supported by the Third Affidavit of Terry L. Pruitt and the Expert Report of Josh Fowler dated August 3, 2017, which is verified by an affidavit from Mr. Fowler, and by Pioneer's memorandum of law in support hereof. All of these are being filed contemporaneously with this motion.

Pioneer is a special purpose district formed by statute to deliver clean and economical water to its customers. Pioneer is governed by an enabling act, S.C. Code Ann. § 6-13-210 *et*

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<sup>1</sup> Pioneer does not understand Oconee Joint Regional Sewer Authority ("OJRSA") to be a plaintiff in this case. To the extent OJRSA is a party plaintiff, its status is identical to that of the other Plaintiffs and this motion also seeks summary judgment as to OJRSA on the grounds set forth herein.

*seq.* (the “Act”). Pioneer’s Board exercised its legislative discretion to build Pioneer’s own water treatment facility (the “Facility”), rather than remaining dependent on Westminster and Seneca for water. Plaintiffs’ overarching contention is that Pioneer – despite being formed to deliver water to its customers – lacks the authority to build or operate the Facility.

Pioneer is entitled to summary judgment or partial summary judgment on each of the following independent grounds, most of which are purely legal issues for resolution by the Court. Should the Court not find complete summary judgment is appropriate, then granting partial summary judgment will still be of substantial benefit in simplifying the issues remaining for trial.

***Plaintiffs Lack Standing to Bring This Challenge.*** This is an unusual case. This Court is faced with three public bodies seeking judicial review of the discretionary functions of another governmental body with which they have no relationship, other than a commercial one. Plaintiffs seek judicial review of a legislative decision made by Pioneer’s Board, in the exercise of the Board’s discretion to serve its constituents.

A clear and controlling line of cases, including *City of Spartanburg v. County of Spartanburg*, 303 S.C. 393, 395, 401 S.E.2d 158, 159 (1991), makes it clear that Plaintiffs lack standing. Under *City of Spartanburg*, one body politic may challenge the authority of another only if it can “allege an infringement of its own proprietary interests or statutory rights.”

Plaintiffs cannot pass this test.

Although we do not believe it applies, the same result flows from the general test for standing, applicable to non-governmental bodies. (i) No statute gives Plaintiffs standing to bring this action. (ii) Nor do Plaintiffs have “constitutional standing.” They do not allege a tort or breach of contract, or other particularized dispute with Pioneer. They express only a generalized interest in litigating the scope of Pioneer’s authority. (iii) The “public importance”

exception to the standing requirement does not apply here. Besides not being available to entities that are not members of the “public,” the public importance exception is available only where “future guidance” is desirable. That is not the case here. Pioneer is entitled to summary judgment on this basis, dismissing the matter in its entirety.

***This Challenge Is Barred by Laches.*** As this Court saw in ruling on Plaintiffs’ request for a preliminary injunction, Plaintiffs have known about Pioneer’s plan since at least 2008. During the nearly ten years between then and the start of construction, they did nothing. On the other hand, Pioneer took action – in a very public way – to carry out its plan: committing to borrow funds, entering into a contract to construct the facility, and commencing work. The standards for preliminary and permanent injunctions are substantially similar, and the same facts that barred a preliminary injunction in this case also render a permanent injunction inappropriate. Pioneer is entitled to summary judgment on this basis, dismissing the matter in its entirety.

***Oconee Is Barred by Estoppel.*** Not only did Oconee provide the real property for the site of the Facility; in the contract conveying that property, Oconee obtained from Pioneer a covenant that Pioneer would “diligently proceed with construction of, and commence operation of, the Water Facility as quickly as is reasonably practicable,” and an acknowledgement that the “agreement to construct and operate the Water Facility” was a “material term of this Agreement and a material inducement to [Oconee’s] agreement to convey the Property” to Pioneer. Oconee cannot now sue Pioneer to stop the Facility. Pioneer is entitled to partial summary judgment on this basis, dismissing Oconee as a Plaintiff.

***Pioneer’s Board’s Determination That the Facility Is in Ratepayers’ Best Interests Is Entitled to Substantial Deference; Plaintiffs Cannot Meet the Standard to Question That Legislative Act.*** Pioneer is a body politic exercising legislative functions. Plaintiffs seek to

challenge Pioneer's determination that construction of the Facility is in the best interests of Pioneer's customers. In order for a Court to substitute its judgment for that of a legislative body like Pioneer, a plaintiff must "show by clear and convincing evidence the arbitrary and capricious nature" of the challenged enactment. *Bear Enterprises v. County of Greenville*, 319 S.C. 137, 140, 459 S.E.2d 883, 885 (Ct. App. 1995). Plaintiffs cannot meet this standard, and they fail to state a claim for this relief. Pioneer is entitled to partial summary judgment on this basis, dismissing Plaintiffs' claim seeking to challenge whether the Facility is in the best interest of Pioneer's ratepayers.

***The Contents of the Audits, and ORS's Verification Thereof, Are Not Subject to Judicial Review, at Least in This Proceeding.*** The Act directs that Audits of the Facility be submitted to the South Carolina Office of Regulatory Staff for verification of the assumptions of those Audits. ORS provided that verification. Twice. Plaintiff seek to go behind those verifications to criticize both Audits and (at least by implication) the ORS verification; they may not. This issue is confided to ORS, by the Act, is not justiciable, and so Plaintiffs fail to state a claim. Moreover, Plaintiffs lack standing to challenge the contents of the Audits and the ORS verifications. Pioneer is entitled to partial summary judgment on this basis, dismissing any claim seeking to litigate the contents of the Audits or ORS's approval thereof.

***The Act Authorizes Pioneer to Construct the Facility.*** Plaintiffs' core contention is that the Act requires Pioneer to purchase treated water exclusively from other utilities, such as Westminster or Seneca, and does not allow Pioneer to obtain water from any other readily available source, like Lake Hartwell. The Act does not say this. Pioneer is entitled to partial summary judgment on this basis, holding as a matter of law that the Act gives Pioneer the authority to construct the Facility.

Pioneer accordingly asks this Court to enter summary judgment, or in the alternative partial summary judgment, on each of the grounds specified in this motion.

Respectfully submitted,

WYCHE, P. A.

s/ J. Theodore Gentry

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J. Theodore Gentry (SC Bar No. 64038)  
Troy A. Tessier (SC Bar No. 13354)  
Camden Navarro Massingill (SC Bar No. 101319)  
44 E. Camperdown Way  
Greenville, SC 29601  
Telephone: 864-242-2800  
Facsimile: 864-235-8900  
E-Mail: [tgentry@wyche.com](mailto:tgentry@wyche.com)  
[ttessier@wyche.com](mailto:ttessier@wyche.com)  
[cmassingill@wyche.com](mailto:cmassingill@wyche.com)

Alice W. Parham Casey (SC Bar No. 13459)  
801 Gervais Street, Suite B  
Columbia, SC 29201  
Telephone: 803-254-6542  
Facsimile: 803-254-6544  
E-Mail: [tcasey@wyche.com](mailto:tcasey@wyche.com)

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**Attorneys for Defendant Pioneer Rural Water  
District of Oconee and Anderson Counties**