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Aug 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-000520

Case No. 2024-CP-23-05956

Commissioners of Public Works of the City of Greenville, South Carolina,Respondent

v.

United States Pipe and Foundry Company LLC, TEC Utilities Supply Inc.,
and Hayes Pipe Supply Inc.,Defendants,

of which

United States Pipe and Foundry Company LLC, is theAppellant.

RENEWED MOTION FOR EXPEDITED APPELLATE REVIEW

Now that the parties have served their final briefs and the record on appeal, Respondent, Commissioners of Public Works of the City of Greenville, South Carolina (“Greenville Water”), respectfully renews its motion for an Order to consider this appeal on an expedited basis, pursuant to Rule 263(b), SCACR and other applicable law. Based on the Return that was filed by the Appellant, United States Pipe and Foundry Company LLC (“U.S. Pipe”) on April 3, 2025, it appears that U.S. Pipe consents to an expedited appeal. Accordingly, with the consent of the parties, and for good cause shown (discussed below), Greenville Water respectfully urges the Court to resolve this appeal on an expedited basis.

I. INTRODUCTION

This matter concerns important issues of public interest related to the quality and safety of drinking water and the structural integrity of public infrastructure in Greenville County, South Carolina. Greenville Water alleges that U.S. Pipe manufactured and deceptively sold, through its distributors, significant quantities of ductile iron pipe with defective cement-mortar lining that causes numerous problems, including increased corrosion causing deterioration of water quality; build-up of corrosive material causing water pressure problems; damage to infrastructure, including critical fire prevention systems, water mains, customer service lines, and valves caused by loose cement mortar; and proliferation of numerous types of bacteria that can be harmful to human health if allowed to reach unsafe levels. These problems have obvious and serious implications for the more than 660,000 residents and millions of annual visitors to Greenville, Pickens, Laurens, and Anderson Counties, that Greenville Water presently serves.

U.S. Pipe has refused to participate in pre-trial discovery while their motion for arbitration is under consideration.¹ This appeal has hampered Greenville Water's ability to conduct discovery to identify the full extent and scope of the problems with the ductile iron pipe and the potential dangers posed to the general public. It is thus imperative that this Court grant expedited appellate review to protect the important public interests at issue in this case.

U.S. Pipe's Return to Greenville Water's prior Motion for Expedited Appellate Review noted that U.S. Pipe consents to having this appeal considered on an expedited basis. Accordingly,

¹ While Greenville Water does not believe this appeal automatically stays the trial court's separate Order, compelling U.S. Pipe to respond to Greenville Water's discovery requests, U.S. Pipe has nonetheless refused to respond to Greenville Water's discovery requests during the pendency of this appeal. Should U.S. Pipe persist in its discovery non-compliance, Greenville Water intends to move the trial court for relief.

based on the consent of the Appellant and the Respondent, and for good cause shown, Greenville Water's Renewed Motion for Expedited Appellate Review should be granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

Greenville Water is a body corporate and politic, formed pursuant to South Carolina Code §§ 5-31-10, *et seq.*, that operates and controls a water utility that provides drinking water to more than 500,000 residents in Greenville County and portions of surrounding counties. Compl., ¶ 15; R. at 27. The residents of Greenville County and the surrounding areas as well as millions of visitors each year depend upon Greenville Water to provide safe and quality drinking water. Greenville Water's ability to provide safe drinking water to its residents and visitors to the Greenville area, however, has been substantially compromised by U.S. Pipe's manufacture and sale of ductile iron pipe with grossly defective cement-mortar lining.

Cement-mortar-lined ductile iron pipe is standard in the waterworks industry because the cement-mortar lining prevents water from reacting with the iron contained in the pipes and causing a specific form of harmful corrosion called tuberculation. *Id.* at ¶ 2; R. at 24. To ensure water quality and safety, the American Water Works Association ("AWWA") issues industry standards, approved by the American National Standards Institute ("ANSI"), that require all cement-mortar-lined ductile iron pipe to have a uniform thickness for cement-mortar lining of 1/16-inch throughout the length of the pipe. *Id.* at ¶ 4; R. at 24.

Ductile iron pipe that is not properly lined with cement mortar results in myriad problems caused both by the chemical reaction between water and iron as well as cement that inevitably breaks away from the pipe and falls into the water distribution system. *Id.* at ¶¶ 37-44; R. at 32-33. These problems include, without limitation, increased corrosion causing deterioration of water quality; build-up of corrosive material causing water pressure problems; damage to infrastructure,

including critical fire prevention systems, water mains, customer service lines, and valves caused by loose cement mortar; and proliferation of numerous types of bacteria that can be harmful to human health if allowed to reach unsafe levels. *Id.* at ¶¶ 10, 38-44; R. at 26, 32-33. As a result, both the South Carolina Plumbing Code and the South Carolina Safe Drinking Water Act require all ductile iron pipe used to provide water service to be cement-mortar-lined in compliance with the ANSI/AWWA standards. *Id.* ¶ 5; R. at 24; *see also* S.C. Code Ann. § 61-58.4(D)(1); S.C. Plumbing Code § 605.3.

Despite issuing a Certificate of Product Compliance, certifying that its cement-mortar-lined ductile iron pipe complied with the relevant ANSI/AWWA standards (and, therefore, South Carolina law) (Compl., ¶¶ 48-52; R. at 35-36), Greenville Water discovered that ductile iron pipe manufactured at U.S. Pipe’s Lynchburg, Virginia facility is grossly defective because the cement-mortar lining is unevenly concentrated on one side of the pipe. Compl., ¶¶ 53-56; R. at 36-37. Below are representative photos of samples of the actual defective pipes, showing the uneven concentration of cement mortar:²



² The piece of yellow tape in the photograph above was placed to hold the cement-mortar lining in place because, as a result of the defect, it became detached from the interior of the pipe when the pipe was cut. During the course of ordinary business it is routinely necessary to “tap” into already installed pipe in order to connect new service lines. When the cement-mortar is unevenly concentrated, as shown in the picture, the cement can become detached from the interior of the pipe and fall into the water distribution system, causing the problems discussed above and elsewhere herein.

Subsequent testing performed by Greenville Water, across numerous deliveries and batches from October 2022 through May 2023, demonstrates a greater than 70% failure rate among pipe manufactured at U.S. Pipe’s Lynchburg, Virginia facility. Compl., ¶ 63; R. at 38. It is, therefore, highly likely that a substantial amount of defective ductile iron pipe—that fails to comply with South Carolina law—has been unknowingly installed in Greenville Water’s distribution system by Greenville Water and contractors of Greenville Water both during that time period and before, exposing residents of and visitors to Greenville County to potentially substandard and unsafe drinking water. *Id.* at ¶¶ 63-65; R. at 38.

As a result, on October 8, 2024, Greenville Water filed its Complaint against Defendants U.S. Pipe, TEC Utilities Supply Inc., and Hayes Pipe Supply Inc., seeking declaratory relief and damages for Defendants’ manufacture and sale of defective ductile iron pipe used by Greenville Water in its distribution system to deliver water to the public. R. at 21-54. On November 12, 2024, U.S. Pipe filed a motion to Dismiss or Stay Pending Arbitration. R. at 132-53. On February 25, 2025, the trial court denied U.S. Pipe’s motion. R. at 1-17. This appeal ensued.

On August 14, 2025, U.S. Pipe filed the Record on Appeal. On August 28 and August 29, 2025, respectively, the parties filed their final briefs. Thus, pursuant to this Court’s April 9, 2025 Order, denying Greenville Water’s motion to expedite without prejudice, Greenville Water respectfully submits this Renewed Motion for Expedited Appeal. The motion should be granted for the following reasons.

III. ARGUMENT

This Court has broad authority to control its own docket. Pursuant to Rule 263(b) of the South Carolina Appellate Court Rules, the Court may shorten the time prescribed for performing any act, except the requirements for service of the notice of appeal. As set forth below, appellate

courts in South Carolina often grant expedited review when, as here, important matters of public interest are involved and expedited review is necessary to prevent future harm or uncertainty.

A. This Appeal Involves Important Matters Of Public Interest.

This litigation concerns matters of critical public importance, including Greenville Water's ability to provide safe, high quality drinking water to the public, in compliance with South Carolina law. Appellate courts in South Carolina have recognized that matters of public importance, like this one, are appropriate for expedited appellate review. *See, e.g., Isom v. Town of Atlantic Beach Municipal Elec. Comm'n*, No. 2023-000888 (Jun. 27, 2023) (granting motion for expedited appellate review in case involving election of public official); *Adams v. McMaster*, 432 S.C. 225, 236 (2020) (holding that expedited resolution of issue was needed where the case involved the conduct of government entities and the expenditure of public funds); *Richland Cnty. v. S.C. Dep't of Revenue*, No. 2016-001839 (Jan. 20, 2017) (granting expedited appellate review in case involving Department of Revenue's exercise of control over political subdivision's use and expenditure of county tax revenues); *Anderson v. S.C. Elec. Comm'n*, No. 2012-211366 (Apr. 20, 2012) (granting petitioners' motion to expedite matter involving "public interest in which time was of the essence"); *Breeden v. S.C. Democratic Executive Committee*, 226 S.C. 204, 208 (1954) (holding question of who was nominee of a political party for the office of county auditor was a question of public interest that should be decided promptly).

Expedited appellate review is necessary here because the longer the defective pipes remain in Greenville Water's distribution system, the risk of harm to both water quality and safety as well damage to public infrastructure materially increases. These risks have broad implications. Greenville Water is responsible for providing safe drinking water for more than 660,000 residents and millions of annual visitors to Greenville, Pickens, Laurens, and Anderson Counties. The

taxpayers in those counties could be responsible for any damage to public infrastructure caused by the defective pipes. The damage to public infrastructure also includes potential disruption of fire prevention systems connected to Greenville Water's system and customer service lines, causing additional public safety and water quality concerns. The public deserves an expedited appeal to ensure that these risks are mitigated as expeditiously as possible. Moreover, Greenville Water also seeks declaratory relief concerning the requirements of the South Carolina Plumbing Code and Safe Drinking Water Act that has broad implications for other public water utilities in the State of South Carolina and the communities they serve. An expedited appeal is, therefore, necessary to timely and expeditiously address the significant public interests involved in this matter.

B. Expedited Review Is Necessary To Prevent Irreparable Harm To Greenville Water And Residents Of And Visitors To Greenville County.

Expedited appellate review is also necessary to prevent irreparable harm to Greenville Water and the public. In *Richland County v. S.C. Dept. of Revenue*, the South Carolina Supreme Court granted expedited appellate review where the appellant argued it had an "individualized and important need for an expeditious determination by th[e] Court." *Richland County*, No. 2016-001839 (Jan. 20, 2017). Here, not only is there a substantial likelihood of ongoing financial and reputational harm to Greenville Water that requires expeditious determination by the Court, but the defective pipes also pose substantial ongoing harm to the public, as set forth above.

This litigation has been pending for more than ten (10) months. Due to U.S. Pipe's refusal to participate in discovery while this appeal is pending, Greenville Water cannot investigate the full extent, scope, and time period of the manufacturing defect until this appeal is resolved. There are currently unknown quantities of defective pipe installed in Greenville Water's distribution system (as well as, on information and belief, those of other public water utilities) for unknown periods of time. It is imperative that Greenville Water be allowed to promptly identify the full

extent and scope of the manufacturing defect, including, but not limited to, the amount of defective pipe installed in its system and the length of time it has been installed, so Greenville Water can begin to remedy the problem and mitigate the potential harm to both Greenville Water and the public. It is thus of the utmost importance that this appeal be reviewed on an expedited basis so that the full extent and scope of the manufacturing defect can be promptly discovered and remedied.

IV. CONCLUSION

For the foregoing reasons, Greenville Water respectfully requests that the Court grant an expedited review of this appeal and issue an Order setting forth an abbreviated and expedited briefing schedule and dates for judicial determination.

Dated: August 29, 2025

Respectfully submitted,

/s/ Adam C. Bach

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PROOF OF SERVICE

I, the undersigned of the law offices of Tonnsen Bach, LLC, attorneys for Respondent Commissioners of Public Works of the City of Greenville, South Carolina, do hereby certify that I have served all counsel of record in this action with a copy of Respondent’s Renewed Motion for Expedited Appellate Review and Certificate of Counsel dated August 29, 2025.

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