

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2012-CP-04-02770
Appellate Case No.: 2014-002488

RECEIVED
JUL 17 2015
SC Court of Appeals

West Anderson Water District, ...Appellant,

v.

City of Anderson, South Carolina, ...Respondent.

RECORD ON APPEAL

VOLUME I of III (Pages 1-498)

HAYNSWORTH SINKLER BOYD, P.A.
Sarah P. Spruill, SC Bar No. 68337
Boyd B. Nicholson, Jr., SC Bar No. 65387
ONE North Main, 2nd Floor
Greenville, SC 29601-2772
Telephone: 864.240.3200
Facsimile: 864.240.3300

Attorneys for the Appellant
West Anderson Water District

GIBBES BURTON, LLC
Frank H. Gibbes, III, SC Bar No. 2461
308 East St. John Street
Spartanburg, SC 29302
Telephone: 864.327.5000
Facsimile: 864.327.5001

J. Franklin McClain
401 South Main Street
Anderson, SC 29624
864.231.1137

Attorneys for the Respondent
City of Anderson, South Carolina

INDEX

Order of March 11, 2013.....	1
Order of September 19, 2014.....	3
Order of October 30, 2014	25
Summons and Complaint.....	28
Amended Answer and Counter-Claims	37
Reply to Counter-Claims	49
Defendants Motion for Summary Judgment.....	53
Plaintiff's Cross-Motion for Summary Judgment.....	107
Pre-Trial Brief of Plaintiff.....	124
Pre-Trial Brief of Defendant.....	149
Letter and Bullet Points submitted by Plaintiff on August 25, 2014	181
Letter and Bullet Points submitted by Defendant on August 25, 2014.....	186
Plaintiff's Motion to Amend.....	192
Defendant's Memorandum Opposing Motion to Amend	202
Transcript of Trial	206
Testimony	
Steven C. Wilson	
Direct.....	208
Cross	242
Redirect.....	289
William R. McCoy	
Direct.....	294
Cross	306
Redirect.....	327
Clayton Dwight Edwards	
Direct.....	328
Cross	334
Redirect.....	340

Recross.....	342
John Ralph Moore, Jr.	
Direct.....	354
Cross	412
Redirect	430
Jeff Caldwell	
Direct.....	433
Cross	440
Redirect	454
Margaret Christian Pope	
Direct.....	456
Motions	
Defendant's Motion for Directed Verdict	345
Plaintiff's Motion for Directed Verdict	494
Trial Exhibits	
Pl. Ex. 1.....	499
Pl. Ex. 2.....	504
Pl. Ex. 3.....	508
Pl. Ex. 4.....	512
Pl. Ex. 10.....	513
Pl. Ex. 14.....	515
Pl. Ex. 15.....	516
Pl. Ex. 17.....	517
Def. Ex. 2	520
Def. Ex. 3	570
Def. Ex. 5	575
Def. Ex. 6	576
Def. Ex. 7	578
Def. Ex. 8	588
Def. Ex. 9	590
Def. Ex. 10	592
Def. Ex. 11	593
Def. Ex. 12	594
Def. Ex. 13	620
Def. Ex. 15/ Pl. Ex. 8	675
Def. Ex. 16	676
Def. Ex. 17	719
Def. Ex. 18	721
Def. Ex. 19	723
Def. Ex. 20	773
Def. Ex. 21	776
Def. Ex. 22	779
Def. Ex. 23	781

Def. Ex. 24	825
Def. Ex. 25	869
Def. Ex. 26	913
Def. Ex. 27	949
Def. Ex. 28/ Pl. Ex. 6	1040
Def. Ex. 29/ Pl. Ex. 5	1051
Def. Ex. 30	1112
Def. Ex. 31	1113
Def. Ex. 33	1123
Def. Ex. 35	1164
Def. Ex. 36	1181
Def. Ex. 40	1216
Def. Ex. 48	1218
Def. Ex. 49	1222
Defendant's Responses to Requests to Admit	1226
Certificate of Appellant.....	1231

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS FILED-CLERK'S OFFICE
ANDERSON SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0402770

West Anderson Water
District

2013 MAR 14 A 8:00
COMMON PLEAS AND
GENERAL SESSIONS

Anderson City of South
Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

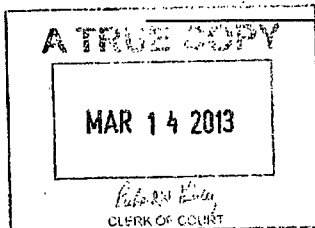
Both parties' motions for summary judgment are hereby denied as being questions of fact. No formal order requested or required.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

CPFORM4M
SCCA SCRPC Form 4C (Revised 12/2011)

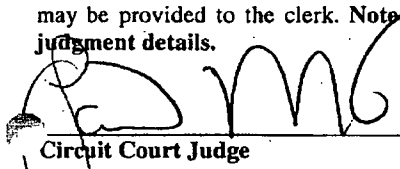


FILED

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

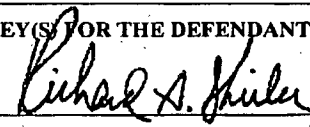
 _____ 2155 3/11/2013
Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on 3/14, 2013 and a copy mailed first class or placed in the appropriate attorney's box on 3/15 2013 to attorneys of record or to parties (when appearing pro se) as follows:

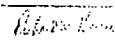
Boyd Benjamin Nicholson Jr. PO Box 2048 Greenville, SC 29602
ATTORNEY(S) FOR THE PLAINTIFF(S)

Frank H. Gibbes III 308 E. St. John St. Spartanburg, SC 29302
ATTORNEY(S) FOR THE DEFENDANT(S)


Richard A. Shirley - Clerk of Court

Court Reporter

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAR 14 A 8:43
COMMON PLEAS AND
GENERAL SESSIONS

A TRUE COPY
MAR 14 2013

CLERK OF COURT

FILED CLERK'S OFFICE
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
14 SEP 22) AM 11:38
IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

West Anderson Water District,)
Plaintiff,)
vs.)
City of Anderson, South Carolina,)
Defendants.)

ORDER INCLUDING FINDINGS OF
FACT AND CONCLUSIONS OF LAW

C.A. No.: 2012-CP-040270

A TRUE COPY

SEP 22 2014

Plaintiff West Anderson Water District (the "District") and the City of Anderson, South

Carolina (the "City") are members of what is now the Anderson Regional Joint Water System (the "ARJWS"). The City has been providing potable water and related services to industrial facilities of Michelin North America, Inc. ("Michelin") located on property in Anderson County ("the Michelin Site") since 2002 under the terms of a March 21, 2002 Water Sale and Purchase Agreement (the "Agreement") executed by members of the ARJWS.

In April 2012, Michelin announced that it would construct a new facility (the "New Facility") adjacent to the existing facility (the "Existing Facility") on the Michelin Site. Following the announcement the District objected to the City serving Michelin's New Facility.¹

In this action the District asks the Court to declare that the City is not entitled to serve the New Facility under the terms of the Agreement. Alternatively, the District asks the Court to find that the District's consent to the City's more than decade-long service to Michelin's industrial facilities under the Agreement is unlawful and void.

¹ At trial counsel for the District stated that the District's Board continues to consent to the City serving Michelin's Existing Facility.

1.6.22
RKK

The City filed an Amended Answer and Counterclaim. The City's pleading includes affirmative defenses of the statute of limitations, waiver, laches, and estoppel. The City's pleading also includes a counterclaim for damages for unjust enrichment and negligent misrepresentation and a request for declaratory relief.

This action was tried before the Court on August 12-13, 2014. At the conclusion of the trial, the Court asked the parties to submit written post-trial arguments. The parties did so on August 25, 2014. Having carefully considered the evidence presented at trial and the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.²

FINDINGS OF FACT

1. Prior to February 20, 2002, Duke Energy Corporation ("Duke") owned and operated a water system that served wholesale and retail water customers located throughout Anderson County (including customers located within the City of Anderson).

2. On February 14, 2000, the District and other water companies, (all of whom were members of the Anderson County Water Association)(the "ACWA"), entered into an Asset Purchase Agreement with Duke pursuant to which the water companies would purchase Duke's water system (wholesale and retail) for some \$70,200,000. (DX 2). The members of the ACWA did so for the express purpose of "establishing, pursuant to the South Carolina Joint Municipal Water Systems Act, South Carolina Code Section 6-25 *et seq.*, a joint water system to operate a water system in Anderson County, South Carolina...."

3. On July 3, 2000, Duke entered into a Water Service Agreement with Michelin (the "WSA") and began providing water service to Michelin. (DX 3).

² To the extent any Findings of Fact are more appropriately designated Conclusions of Law or any Conclusions of Law are more appropriately designated Findings of Fact, they are adopted as such.

2 of 22
RK

4. On August 1, 2001, the District and the other water companies entered into a First Amendment to Asset Purchase Agreement with Duke pursuant to which the purchase price for Duke's water system (wholesale and retail) was reduced from \$70,200,000 to \$68,000,000. (DX 7). In the First Amendment, the District and the other water companies waived any objections that they might have to the WSA between Duke and Michelin.

5. During the summer and fall of 2001, an agreement was reached in principle among Duke, the City, and members of the ACWA (including the District) under which Duke would sell its wholesale water system to members of the ACWA (including the District) for roughly \$48,000,000 and Duke would sell its retail water system to the City for approximately \$16,000,000. At the time the purchasing parties intended for all of the purchasing entities to become members of a joint water system established pursuant to the South Carolina Joint Municipal Water Systems Act as originally contemplated by members of the ACWA.

6. As the fall of 2001 progressed, the water companies who were then organized as "not-for-profit" entities (including the District) took required steps to convert to public service districts. They did so for the express purpose of taking advantage of recent legislative changes that authorized a water company organized as a public service district to participate as a voting member of a joint water system. The District applied on or about October 18, 2001, and became a public service district on or about December 31, 2001.

7. During the latter half of 2001 and early 2002, Duke, the City, and members of the ACWA negotiated the critical details and the key terms of the agreement that they had reached in principle for purchase of the Duke water system. During the same period, the City and members of the ACWA negotiated the critical details and the key terms of the contract between the

3 612
RR

ARJWS³ and its members that would establish and define (a) the rights and the obligations between the joint water system and its members and (b) the rights and the obligations among the members themselves. This latter agreement was ultimately named the Water Sale and Purchase Agreement (the "Agreement") (DX 29).

8. During the course of the foregoing negotiations, John Moore, City Manager for the City, was a key negotiator for the City. Kent Guthrie (a co-Project Manager for the ACWA) and Charlie Gibson were principle negotiators for the ACWA and its members. District Chairman J.T. Hopkins also participated in negotiations on behalf of the District. All sides were represented by various counsel.

9. During the latter half of 2001 and early 2002, negotiations between the City and members of the ACWA focused on two key issues that lie at the heart of this dispute: first, defining the territorial boundaries of the service area that each member of the ARJWS would be entitled to serve; and, second, determining which entity would provide service to sites then occupied by three industrial customers (Michelin, Owens-Corning, and BASF).⁴

10. The latter issue was resolved by December 7, 2001. The District and Starr-Iva agreed in principle that the City would provide service to the sites then occupied by Michelin, Owens-Corning, and BASF.

11. On the first issue, as negotiations continued, the parties to the Agreement never deviated from their intention that the service area that each member would be entitled to serve would be delineated and shown on a territorial map that would be attached to the Agreement:

³ In March 2002, the joint water system was named the Anderson County Joint Municipal Water System. For purposes of this Order, the Court will identify the joint water system as the ARJWS (its current name).

⁴ The three sites were unique in the sense that the sites were located within the geographical boundaries of either the District or the Starr-Iva Water and Sewer District but Duke included the sites in its retail water system and sold the infrastructure to serve the sites to the City as part of its purchase of Duke's retail water system.

⁴ '6 2 2

RKK

- a. During the summer and fall of 2001, William McCoy, Co-Project Manager for the ACWA⁵; Beeson-Rosier; and Design South worked on preparation of Territorial Maps that would show the service area each member would serve. During September 2001, Mr. McCoy reported that service area maps were nearing completion. (DX 8 & 9).
- b. During the period November-December 15, 2001, all drafts of the Agreement prepared by attorney Margaret Pope except the fifth draft dated December 15, 2001 contain a draft of a Territorial Boundaries clause with reference to an attached Territorial Map. The fifth draft for the first time includes, in the "Background and Findings" section, the following prefatory clause confirming that the City will serve Michelin, Owens-Corning, and BASF:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

The fifth draft, however, deletes the Territorial Boundaries clause with reference to an attached Territorial Map that appeared in prior drafts of the Agreement. (DX 12, 13, 16, 19).

- c. During the period December 17, 2001-January 30, 2002, the City demanded that the Territorial Boundaries clause and the Territorial Map be reinserted in the Agreement and that attorneys Pope and Hill include "wording acknowledging City territory to be respected by water companies" The other parties agreed and the Territorial Boundaries clause with reference to an attached Territorial Map is included in all later drafts of the Agreement. (DX 20-22 & 23-25).

12. On February 20, 2002, the District, the other water districts who were members of the ACWA, and the newly formed joint water system entered into a Second Amendment to Asset Purchase Agreement with Duke. (DX 26). In the amended agreement the District expressly

⁵ Mr. McCoy served as an expert witness and trial witness for the District in this litigation.

5
RKC

approved Duke selling "the retail portion of the water system to the City of Anderson, South Carolina" for a base price of \$15,580,000. Included in the amended agreement with Duke is:

- a. a narrative "Service Area Boundary Description" for the City's retail service area which includes "all of the Owens Corning Fiber Plant property" and "the BASF Plant property and Michelin Plant property" and
- b. a map entitled "Service Area Map Retail Water System City of Anderson" that graphically describes the City's retail service area which encompasses the site on which the industrial facilities of Michelin are located.

13. Also on February 20, 2002, the City entered into an Asset Sale Agreement with Duke whereby the City purchased transmission lines, storage tanks, and related facilities generally comprising Duke's retail water system. (DX 27). As part of the City's purchase, Duke assigned to the City the WSA between Duke and Michelin dated July 3, 2000. Not coincidentally, included in the agreement with Duke is a narrative "Service Area Boundary Description" and a map graphically describing the City's retail service area which encompasses the site on which the industrial facilities of Michelin are located. The "Service Area Boundary Description" and the map are identical to the "Service Area Boundary Description" and the map included as part of the Second Amendment to Asset Purchase Agreement between Duke, the District, and others.

14. On March 21, 2002, the City, the District, and other members of what is now the ARJWS entered into the Water Sale and Purchase Agreement (the "Agreement"). Under the terms of the Agreement, each member of the ARJWS agreed to purchase water from the ARJWS to provide service to customers located within its defined service area. As expressly contemplated by the parties based on negotiations to date and as required by the City as a condition to entering into the Agreement, the Agreement provides:

6 of 22

(RKK)

Section 6.02. Territorial Boundaries. In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes, the parties have agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve. The Territorial Map is attached hereto as Exhibit D.

The City's service area shown on the Territorial Map is identical to that shown on the maps attached to both the Second Amendment to Asset Purchase Agreement and the Asset Sale Agreement. The service area assigned to the City on the Territorial Map includes the site on which the industrial facilities of Michelin are located.

15. Based upon City Manager Moore's uncontradicted testimony, the City would not have invested substantial money and made long-term contractual commitments to acquire the infrastructure and the water capacity to serve the Michelin Site if, as District General Manager Wilson suggested:

- a. The City would lose that right if the Existing Facility burned down a month after the City purchased Duke's retail water system and Michelin re-built an identical facility in its place or
- b. The City would lose that right if an economic downturn like that in 2008 forced Michelin to close the Existing Facility and some other business began operations at the site or
- c. The City did not have the right to receive additional revenues from future expansions on the Michelin Site which the City could use to defray, among others, the long term obligations the City incurred with the joint water system to acquire allocated water capacity for both Michelin's Existing Facility and anticipated future expansions at the site.

Wilson himself conceded that the City would not be making a wise or common-sense investment if the City purchased Duke's retail water system and committed to the long term obligations set out in the Agreement subject to one or more of the risks described above.

16. The only witness that the District presented at trial who actually reviewed drafts of the Agreement and participated in negotiations concerning its terms with the City was William

7.06.22
RKK

McCoy. McCoy, Co-Project Manager for the ACWA and expert witness for the District, corroborated the testimony that the City presented from John Moore, who personally participated in negotiations for the Agreement, and Margaret Pope, who drafted the Agreement. McCoy testified that:

- a. The Territorial Map attached as Exhibit D to the Agreement was intended to show the service area that each member was entitled to serve and
- b. Steve Wilson, General Manager for the District, instructed him to "carve the Michelin Site out" of the District's boundaries and to include it in the City's service area on Exhibit D.

17. The City has been providing potable water and related services to Michelin facilities located on the Michelin Site under the terms of the WSA and the Agreement continuously since 2002. During the period from February 20, 2002 to the present, the City reasonably relied on the District's express consent when the City incurred significant costs and expenses to provide service to Michelin's Existing Facility and future additions on the Michelin Site. Specifically, the City (a) acquired the necessary infrastructure to serve the Michelin Site from Duke, (b) purchased potable water capacity to serve the Michelin Site from the ARJWS, and (c) upgraded the existing water system to serve current and future facilities located on the Michelin Site.

18. In or about April 2012, Michelin announced that it would construct a New Facility to manufacture tires for large construction equipment on the Michelin Site that the City has served since 2002. The New Facility is located within the service area originally allocated to the City and shown on the Territorial Map that is attached as Exhibit D to the Agreement. The City has been providing service to the New Facility since March 12, 2013.

8/6/22
AKK

CONCLUSIONS OF LAW

1. The Agreement Is Ambiguous as a Result of Which Extrinsic Evidence is Admissible to Show the Intent of the Parties to the Agreement.

The critical issue here is the proper construction of the terms of the 2002 Water Sale and Purchase Agreement. In Ward v. West Oil Co., Inc., 379 S.C. 225, 665 S.E.2d 618 (Ct. App. 2008), the Court summarized legal principles governing construction of a contract:

The construction of a clear and unambiguous contract is a question of law for the court. Ward, 379 S.C. at 239 (citation omitted).

If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. Id. at 239 (citation and quotation marks omitted).

Both the District and the City have argued that the Agreement is unambiguous and each asked the Court to construe the Agreement in its favor. The Court, however, concluded that the Agreement is ambiguous because of conflicting language found in the prefatory clause contained in the "Background and Findings" section and in § 6.02 - the Territorial Boundaries clause with Territorial Map attached as Exhibit D to the Agreement.

In Ward the Court addressed the manner in which a court should proceed if a contract is ambiguous:

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." ... "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning."

665 S.E.2d at 626 (citations omitted).

9 of 22
Rxx

Whether a contract's language is ambiguous is a question of law. ... Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties.

Id. (citations omitted)

The courts, in attempting to ascertain this intention, will endeavor to determine, the situation of the parties, as well as their purposes, at the time the contract was entered." ... [By] doing so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered into so that it may judge the meaning of the words and the correct application of the language."

Id. at 627. In Ward the Court also stated: "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail."

Id. at 247 (citation omitted).

2. Based on the Evidence Presented at Trial, the City Is Entitled to Serve the Michelin Site During the Term of the Agreement.

When the evidence presented at trial is considered from a perspective of "common sense and good faith," the parties' intent in entering into the Agreement is readily apparent. From the beginning, the Asset Purchase Agreement that the District and other water companies signed with Duke on February 14, 2000, stated that they did so for the express purpose of "establishing, pursuant to the South Carolina Joint Municipal Water Systems Act, South Carolina Code Section 6-25 *et seq.*, a joint water system to operate a water system in Anderson County, South Carolina...."

The very concept of combining some eight or nine existing water systems into a joint water system necessarily required the members to address and resolve boundary disputes and to agree upon the areas that each member would serve as part of a joint water system. To this end,

10-6-22

KKK

during the summer and fall of 2001, William McCoy, Beeson-Rosier, and Design South worked on preparation of Territorial Maps that would show the service area each member would serve. Early drafts of the Agreement included a Territorial Boundaries clause that referenced a Territorial Map.

The problem of addressing and resolving boundary disputes and agreeing upon the areas that each member would serve became, however, more acute after the parties agreed that Duke would sell its wholesale water system to members of the ACWA (including the District) for roughly \$48,000,000 and that Duke would sell its retail water system to the City for approximately \$16,000,000. The complexity arose because Duke included three industrial customers (Michelin, Owens-Corning, and BASF) in its retail water system and agreed to sell the infrastructure to serve the three sites to the City as part of its purchase of Duke's retail water system even though the three sites were located within the geographical boundaries of either the District or the Starr-Iva Water and Sewer District.

During the Fall of 2001, the City, Starr-Iva, and the District discussed which entity would serve Michelin, Owens-Corning, and BASF and the financial ramifications if an entity other than the City served one or more of the three. By December 7, 2001, the City, Starr-Iva, and the District had agreed that the City, which had agreed to purchase the infrastructure to serve the sites from Duke, would serve all three.

Shortly after that understanding was reached, in a Fifth Draft of the Agreement dated December 15, 2001 (DX 19), Margaret Pope, the attorney drafting the Agreement, added the "Background and Findings" clause but inexplicably deleted the Territorial Boundaries clause and map. When the City discovered the deletion, the City demanded, as a condition to closing the transaction, that the Territorial Boundaries clause and the Territorial Map be reinserted in the

11.6.22
XXX

Agreement and that Ms. Pope include "wording acknowledging City territory to be respected by water companies" At a joint meeting held on December 27, 2001, the other parties agreed to the City's demand. As a result, the Agreement, as signed, included:

Section 6.02. Territorial Boundaries. In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes, the parties have agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve. The Territorial Map is attached hereto as Exhibit D.

(Emphasis added).

During this same time period, District General Manager Wilson instructed William McCoy to "carve the Michelin Site out" of the District's boundaries and to include it in the City's service area on the Territorial Map. The Territorial Map that is attached to the executed Agreement as Exhibit D shows just that.

The March 21, 2002 Water Sale and Purchase Agreement was the third part of a complex series of transactions that were necessary to creation of the ARJWS. This agreement followed the two agreements with Duke dated February 20, 2002: one under which the ARJWS and its members (exclusive of the City) purchased Duke's wholesale water system; a second under which the City purchased Duke's retail water system.

Not coincidentally, the City's "territorial boundaries" (service area) shown on the Territorial Map that is Exhibit D to the March 21, 2002 Water Sale and Purchase Agreement are identical to the City's "retail service area" shown on the Service Area Map that is attached to each of the agreements with Duke. Moreover, each of the agreements with Duke contains a narrative description of the City's "retail service area" that is depicted on the Service Area Map that is attached to each of the agreements with Duke. The narrative states that the City's "retail service area" includes the "Michelin Plant property."

"[I]n the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together. Furthermore, where the instruments have not been executed simultaneously but relate to the same subject matter and have been entered into by the same parties, the transaction comprising the contract will be considered as a whole." Ward, 379 S.C. at 244-245 (citations and quotation marks omitted).

A contract should receive a sensible and reasonable construction and not such construction as will lead to absurd consequences or unjust results. Holden v. Alice Manufacturing, Inc., 317 S.C. 215, 221, 452 S.E.2d 682 (Ct. App. 1994). Under any "sensible and reasonable construction" of the Agreement, the City is entitled to provide potable water services to the Michelin Site inclusive of both Michelin's Existing Facility and Michelin's New Facility during the term of the Agreement.

To find otherwise would lead to "absurd consequences or unjust results." During the period from February 20, 2002 to the present, the City reasonably relied on the District's express consent when the City incurred significant costs and expenses to provide service to Michelin's Existing Facility and future additions on the Michelin Site. This included the City (a) acquiring the necessary infrastructure to serve the Michelin Site from Duke, (b) purchasing potable water capacity to serve the Michelin Site from the ARJWS, and (c) upgrading the existing water system to serve current and future facilities located on the Michelin Site. The City did so with the expectation that Michelin would be successful and have increased potable water needs in the future. The City undoubtedly would not have incurred this expense had it not known it had the right to serve any and all facilities that might be located on the Michelin Site during the term of the Agreement.

13⁰⁶ 6 22
KXK

3. The District's Consent to the City's Provision of Service is Valid.

The District argues in the alternative that its consent to the City's provision of service to Michelin's industrial facilities constitutes an unlawful delegation of governmental authority and is thereby void and unenforceable. The District asserts that the consent it gave more than twelve years ago is void because (a) the Agreement extends beyond the term of the District's then current governing body without statutory authority to do so and/or (b) the District's consent involves a "substantial compromise[]" of its governmental function and authority. After carefully considering the District's arguments, the Court concludes that the District is wrong on both counts. Such consent is specifically authorized by S.C. Code Ann. §§ 5-7-60, 33-36-1310, and 6-25-5 et seq.

As an initial matter, South Carolina Code Section 5-7-60, outlining the powers and functions of municipalities, provides that a municipality

may perform any of its functions ... in areas outside the corporate limits of such municipality by contract ... except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, [...]. Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.

S.C. Code Ann. § 5-7-60 (emphasis added). The District's consent to the City's provision of service within the District's geographic boundaries is therefore expressly contemplated and sanctioned by the legislature.⁶

⁶ In its Pre-Trial Brief the District suggests that S.C. Code Ann. § 5-31-1910 prohibits the City from serving the Michelin site. Section 5-31-1910, however, is clearly not applicable since it does not deal with providing service in another water district's designated service area. Moreover, this section does not apply in the context of the 2002 Water Sale and Purchase Agreement which involves agreements made between members of the Joint Water System to facilitate the purchase of the Duke water system and formation of the joint water system. The Joint Authority

A. THE LEGISLATURE SPECIFICALLY AUTHORIZED A PUBLIC SERVICE DISTRICT TO ENTER INTO LONG TERM CONTRACTS FOR THE EXPRESS PURPOSE OF PARTICIPATING IN A JOINT WATER SYSTEM.

On July 20, 2001, the Governor signed into law Act No. 78 (the "Act"). The Act allowed nonprofit corporations organized for purposes of providing water services to elect to become public service districts. Simultaneously, the Act amended the Joint Water Systems Act to allow these newly converted public service districts to become members of joint water systems. Act No. 78 2001.⁷ In promulgating this Act, which was limited to nonprofit corporations organized for the purposes of providing water service, the Legislature found:

The General Assembly finds, under certain conditions, that the not-for-profit corporations organized under Act 1030 of 1964, for the purposes of providing water services, should be granted the right to elect to become public bodies politic and corporate for reasons including but not limited to, the following: [...] the right to participate in a joint municipal water system as authorized under Chapter 25, Title 6 of the 1976 Code [...].

Act No. 78 2001. S.C. Code Ann. § 33-36-1310(A) ("For the exclusive purposes of participating in a joint municipal water system ..., a nonprofit corporation incorporated for the purposes of providing water and sewer services ... may elect ... to become a public service district.").

The Act established the powers to be enjoyed by the newly converted public service districts:

The newly converted district has all the rights and powers of a public body politic and corporate of this State including, without limitations, all the rights

Water and Sewer Systems Act, S.C. Code Ann. 6-25-10. et. seq., was enacted long after § 5-31-1910 and is the controlling statute here.

⁷ The act is entitled as follows: "AN ACT TO AMEND CHAPTER 36 OF TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 8 SO AS TO PROVIDE THAT THE MEMBERSHIP OF A NONPROFIT CORPORATION ORGANIZED UNDER THE PROVISIONS OF CHAPTER 35 MAY ELECT FOR THE CORPORATION TO BECOME A PUBLIC BODY POLITIC AND CORPORATE; AND TO AMEND SECTION 6-25-20, AS AMENDED, RELATING TO JOINT MUNICIPAL WATER SYSTEMS, SO AS TO INCLUDE AS A VOTING MEMBER A NONPROFIT CORPORATION WHICH HAS BECOME A PUBLIC SERVICE DISTRICT PURSUANT TO ARTICLE 8, CHAPTER 36 OF TITLE 33 AS ADDED BY THIS ACT."

and powers necessary or convenient to carry out and effectuate its purposes including, but not limited to the following rights and powers to:

[...] (9) enter into contracts of **short or long duration**;

[...] (11) make **contracts of all kinds** and execute all instruments or documents **necessary or convenient to carry out the business of the district** [...].

Act No. 78 2001. (emphasis added). These enumerated powers duplicate and are identical to the powers conferred on joint water systems under the then current version of the joint water system statute. (Compare S.C. Code § 33-36-1360 (2003) with S.C. Code § 6-25-100 (2003)).

B. THE WEST ANDERSON RURAL WATER AND SEWER COMPANY, INC. ACTED IN RELIANCE ON THE ACT.

On December 31, 2001, the West Anderson Rural Water and Sewer Company, Inc., converted to a public service district pursuant to S.C. Code § 33-36-1310 et seq. In 2002, the District became a member of what is now the ARJWS.

On March 21, 2002, the City, the District, and other members of the ARJWS entered into the Agreement. Each party, including the District, represented that it had authority to enter into the Agreement:

Section 2.04. Representations of Each Purchaser. Each Purchaser hereby represents that it is a validly created governmental entity and a public body politic and corporate of the State of South Carolina owning and operating such Purchaser's System which is, or will be at the time of the provision of water pursuant to this Agreement, capable of receiving water as contemplated by this Agreement; that *it has all necessary powers and authority to undertake and perform its obligations under this Agreement*; and that it has taken all necessary action to authorize the execution and delivery of this Agreement.
[...]

The parties agreed to an initial thirty-year term for the Agreement:

Section 2.06. Term of Agreement. This Agreement shall be effective on the date of Seller's acquisition of the System and shall extend for an initial period commencing on such date and extending until July 15, 2032 and thereafter, absent receipt of notice from any Purchaser of its intent not to renew, shall be automatically extended for five periods.

16 of 27

KKK

[...]

Under the terms of the Agreement, each member of the ARJWS agreed to purchase water from the ARJWS to provide service to customers located within its defined service area and to assume certain obligations for payment of ARJWS bonded debt:

Each of the Purchasers has determined that it is in the best interests of its customers and residents located within its respective service area to participate in the acquisition by Seller of the Duke Facilities by becoming a member of Seller and to purchase certain rights to the use of the Duke Facilities. By joining together, economies of scale can be achieved and each Purchaser will be able to acquire a safe and secure source of potable water. Each Purchaser, recognizing the benefits to be gained by such joint action, has determined, pursuant to the provisions of this Agreement, to purchase the right to receive a specified allocated capacity defined in terms of millions of gallons of potable water per day and to pay for such amount of potable water by assuming the responsibility for a corresponding amount of the debt service on bonds issued by Seller to defray the acquisition of the Duke Facilities.

[...]

Each member secured its obligation to pay for ARJWS debt by granting the ARJWS a "lien upon the revenues of each Purchaser's System."

C. THE DISTRICT'S ASSERTION THAT IT LACKED AUTHORITY TO BIND SUCCESSOR BOARDS IN 2002 IS IN ERROR.

In an attempt to avoid contractual commitments that it made more than a decade ago, the District argues that its consent to the City's provision of service to the Michelin Site is void under City of Beaufort v. Beaufort-Jasper County Water and Sewer Authority⁸ and Cunningham v. Anderson County.⁹ The Supreme Court concluded in Beaufort-Jasper that a contract entered

⁸ 325 S.C. 174, 480 S.E.2d 728 (1997)

⁹ Cunningham, Slip. Op. No. 5972 (Ct.App. Jan. 15, 2013, withdrawn, substituted, and refiled on Feb. 27, 2013). Citing Beaufort-Jasper, the Court in Cunningham found that Anderson County could not enter into a "for cause" employment contract with its County Administrator because the County's enabling legislation did not allow it to enter into contracts extending beyond the term of the current council. Cunningham is distinguishable. In contrast to the vague language relied upon by the plaintiff in Cunningham, the District here was explicitly authorized by statute to enter into long-term contracts.

17 of 22
RKK

into by a water authority was void, in part, because it bound successor governing boards by extending indefinitely beyond the contracting board's term. Beaufort-Jasper, 325 S.C. at 181.

The District's reliance on Beaufort-Jasper is misplaced. The Supreme Court decided Beaufort-Jasper in 1997 - four years before the Governor signed Act No. 78 into law on July 20, 2001. Since enactment of Act No. 78, public service districts such as the District have had the power to "enter into contracts of short or long duration" and to "make contracts of all kinds and execute all instruments or documents necessary or convenient to carry out the business of the district." S.C. Code § 33-36-1360 (emphasis added).

Act No. 78 was passed against the backdrop of Beaufort-Jasper, which was decided four years earlier. A basic rule of statutory construction is that the legislature is "presumed to be aware of [judicial] interpretation of its statutes." Henry-Davenport v. School District of Fairfield County, 391 S.C. 85, 89, 705 S.E.2d 26, 28 (2011)(citing State v. Coin Operated Video Game Machines, 338 S.C. 176, 188, 525 S.E.2d 872, 879 (2000)); Wehle v. South Carolina Retirement System, 363 S.C. 394, 611 S.E.2d 240, 245 (2005); State v. Corey D., 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000)("[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects."); Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997); Cowan v. Allstate Insurance Co., 351 S.C. 626, 571 S.E.2d 715 (Ct.App. 2002). Cf. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003)("When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation").

Not only was the legislature aware of Beaufort-Jasper, it obviously intended to change the result for newly converted public service districts by conferring upon them the power to enter

18 of 22 

into contracts of “short or long duration” so they could make the contractual commitments necessary to become members of a joint water system. Act No. 78 2001; S.C. Code § 33-36-1360(A)(9). If the legislature had not intended to permit long-term contracts, it would have had no reason to include the “short or long” language in the Act. Courts “must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something.” Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (citation omitted). Furthermore, courts “are to construe a statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” 16 Jade St., LLC v. R. Design Const. Co., 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012), *reh’g granted* (May 7, 2012); Hinton v. S.C. Dep’t of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335, 343 (Ct.App.2004) (“[The Court] should seek a construction that gives effect to every word of a statute.”).

Moreover, if the court were to adopt the contrary interpretation, it would effectively dismantle the entire scheme of the ARJWS and undo over a decade of interlocking contractual and loan commitments. For example, in the Agreement, the parties agreed to purchase “the right to receive a specified allocated capacity” and to pay for such water “by assuming the responsibility for a corresponding amount of the debt service on bonds issued by Seller to defray the acquisition of the Duke Facilities.” The parties also agreed to grant to the ARJWS a pledge of and lien upon the revenues of each party’s system. If the Court were to adopt the District’s position, the result would be patently unsound and unfair and fly in the face of economic reality (i.e., the joint water system’s long term bond debt obligations).

Joint water systems – like the ARJWS – have statutory authority to enter into contracts “concerning the sale or purchase of capacity and output from a project” for up to fifty years.

19 of 22
RKX

S.C. Code § 6-25-128. If a joint water system can validly enter into contracts for a term extending beyond its governing board, it follows that members of the ARJWS, including public service districts, must be able to do the same.

Indeed, the very purpose of the act allowing non-profit water service companies to elect to become public service districts is to facilitate such participation. If public service districts are unable to enter into contracts in the same manner as joint systems, contracts dependent upon multiyear financing schemes and central to the functioning of joint systems – like the Agreement at issue here – would be impossible. Courts must “reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Accordingly, the Court concludes that § 33-36-1360 should be read to sanction contracts entered into by a public service district that extend beyond the term of its current board.

**D. THE AGREEMENT DOES NOT “SUBSTANTIALLY COMPROMISE”
THE DISTRICT’S GOVERNMENTAL FUNCTION AND AUTHORITY.**

In addition to being statutorily authorized to enter into long-term contracts, the Court concludes that the District’s consent to the City’s provision of service to the Michelin Site is also valid because it constitutes, at worst, a minor delegation of governmental authority and does not “substantially compromise” its discretion or ability to function. In Beaufort-Jasper, a water and sewer authority granted certain municipalities the option of providing water service to a county within the boundaries of the authority in exchange for the municipalities agreeing to purchase water from the authority. Beaufort-Jasper, 325 S.C. at 177. The areas contemplated were within the boundaries of the authority. Under the Agreement, the authority, however, could not provide service to those areas unless the municipalities declined to do so. Id. at 181.

20 6 27
RKK

Finding the provision of water and sewer service to be a governmental function, the court stated that the discretion of a governing body or its successor to so provide must be left “relatively unimpaired.” Id. The Court found that the right of first refusal in that case constituted an unlawful delegation of governmental authority, “not only because [it bound] future governing boards,” but also because of “the nature of the delegation of power itself”. Id. at 180-182.

Emphasizing the sweeping authority delegated to the municipalities in that case, the Court found that the “[m]unicipalities are not simply operating Authority’s system; rather, they have the power to decide when Authority may provide water to anyone in its own service area.” Id. at 182. The Court distinguished such comprehensive delegation from valid “minor delegations of power,” which do not “substantially compromise” the primary function of a special purpose district. Id. at 180, n. 4.

In contrast to the broad delegation conferred upon municipalities in Beaufort-Jasper, the scope of the District’s consent here is circumscribed. As the Territorial Map graphically depicts, the Michelin Site comprises only a small part of the District’s service area. As specifically provided in the Agreement, the District retains the exclusive right to serve customers located elsewhere in its service area. Rather than a right of first refusal, which rendered the water authority’s ability to provide service contingent upon the whim of the municipalities, the District here consented only to the City’s provision of service to a specifically defined area.

In 2001, the legislature spoke in plain and unequivocal language in Act No. 78. Long-term contracts entered into by public service districts like the District here are not only valid, they are vital to the functioning of joint water systems like the ARJWS. Taking advantage of Act No. 78, the District made long-term contractual commitments to the ARJWS and other members of the ARJWS when it entered into the 2002 Agreement. The District did so to induce

21 ²² *RKK*

other members to make similar commitments. Having induced others to commit, the District should not now be heard to say its own commitments are void. As the court in Beaufort-Jasper recognized, it is "disingenuous" for the District – twelve years later - to claim that it lacked the authority to do so. Beaufort-Jasper, 325 S.C. at 177, n. 2.

4. The Court Grants the City's Counterclaim for Declaratory Judgment.

Given the Court's findings and rulings on the District's claims, the Court grants the City's counterclaim for declaratory judgment. Specifically, the Court finds and concludes that the City is entitled to provide potable water and related services to the Michelin Site as that site is shown on the Territorial Map that is attached to the Agreement as Exhibit D during the term of the Agreement. Any further issues raised by the City's counterclaims are moot.

CONCLUSION

For the foregoing reasons, the Court finds and concludes that:

- a. the claims asserted by the West Anderson Water District should be dismissed with prejudice;
- b. the City of Anderson is entitled to have judgment entered in its favor on the claims asserted by the District;
- c. the City's counterclaims against the District are granted to the extent set forth above and are otherwise dismissed without prejudice; and
- d. the City of Anderson is entitled to have judgment entered in its favor on its counterclaim for declaratory judgment as set forth above.

AND IT IS SO ORDERED.


R. Keith Kelly
Judge, Tenth Judicial Circuit

September 22, 2014

Goffney, SC

22 of 22

FILED CLERK'S OFFICE
ANDERSON, SC
2014 SEP 22 PM 11 38
CLERK OF COURT AND
GENERAL SESSIONS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-04-02770

West Anderson Water District,

City of Anderson, South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.**
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After thorough consideration, the Court hereby denies Plaintiff's timely Motion to Amend, Pursuant to Rule 52(c), SCRPC, the Court issues this ruling without a hearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

NOV - 5 2014

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

A. Keith Kelly
Circuit Court Judge

2165
Judge Code

30 October 2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the 5th day of Nov., 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 6th day of Nov., 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Sarah P. Spruill, SC Bar No. 68337
Haynsworth Sinkler Boyd, P.A.
ONE North Main Street, 2nd Floor, Greenville, SC 29601
(864) 240-3220
ATTORNEY(S) FOR THE PLAINTIFF(S)

Frank H. Gibbes, III, SC Bar No. 2461
Gibbes Burton, LLC
308 East St. John Street, Spartanburg, SC 29302
(864) 327-5800
ATTORNEY(S) FOR THE DEFENDANT(S)
Clifford A. Huley
CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

FILED-CLERK'S OFFICE
ANDERSON SC
2014 NOV -5 AM 11:59
COMMON PLEAS AND
GENERAL SESSIONS

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 11/7/14

C/M # 13924.0003

Routing BBN, JPP, PRL, JB

Calendared _____

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

West Anderson Water District,)

Plaintiff,)

v.)

City of Anderson, South Carolina,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2012-CP-04- 02770

S U M M O N S

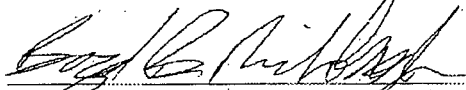
**(Non-Jury -- Declaratory and
Injunctive Relief Requested)**

TO: THE DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy upon the subscriber at Post Office Box 2048, Greenville, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the Plaintiff will apply to the Court, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., S.C. Bar No. 65387

Post Office Box 2048

Greenville, SC 29602

Tel.: (864) 240-3247 (Telephone)

Fax: (864) 240-3336 (Facsimile)

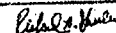
E-Mail: nnicholson@hsblawfirm.com

Attorneys for the Plaintiff

August 17, 2012
Greenville, South Carolina

A TRUE COPY

AUG 17 2012


CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

West Anderson Water District,)

Plaintiff,)

v.)

City of Anderson, South Carolina,)

Defendant.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-04-02770

COMPLAINT
(Non-Jury -- Declaratory and
Injunctive Relief Requested)

The Plaintiff, West Anderson Water District (the "District"), complaining of the Defendant, City of Anderson, South Carolina (the "City") herein, would allege and show as follows:

JURISDICTION AND VENUE

1. The District is a special purpose district created for the sole purpose of providing water and related services to customers within its statutorily mandated service area and territory. The District's service area is completely within Anderson County, South Carolina.

2. The City is a municipality of the State of South Carolina and is located in the County of Anderson, South Carolina.

3. This action involves the distribution and sale of water and related services to customers residing and/or doing business in Anderson County, South Carolina.

4. For the foregoing reasons, jurisdiction and venue in this Court are proper.

A TRUE COPY

AUG 17 2012

Richard A. Huey
CLERK OF COURT

FACTS

5. In 1971 the West Anderson Rural Water Company, Inc. (the "Company"), a precursor of the District, was created by virtue of a charter issued by the South Carolina Secretary of State.

6. In 1973 the Company received a charter from the County of Anderson ("County") granting the Company a franchise to operate a water system within the County in the following location:

Starting at the intersection of U. S. Highway 29 South and State Road 65 (Dow Boulevard near the Dow Badische Plant), thence in a southerly direction along the Eastern side of U. S. Highway 29 for approximately 500 feet to a culvert; thence in a westerly direction along the center of said culvert and drainage ditch for approximately 2,400 feet to an existing pond; thence in a southwesterly direction along the center of said pond and tributary to Richland Creek; thence in a westerly direction along the center of Richland Creek to Big Generostee Creek; thence in a southwesterly direction along the center of Big Generostee Creek to the Savannah River; thence in a northwesterly direction along the center of the Savannah River to Hartwell Dam; thence in a northerly direction along the Eastern shore of Hartwell Lake to State Road 161; thence in a southerly direction along the Eastern side of State Road 161 to the intersection with Pearman Dairy Road; thence in a westerly direction along the South side of Pearman Dairy Road for approximately 0.5 mile to the intersection with Dunn Road; thence in a southerly direction along the Eastern side of Dunn Road for approximately 0.6 mile to the intersection with Cann Road; thence along the Eastern side of Cann Road in a southerly direction for approximately 0.5 mile to intersection of Gerrard Road; thence along Eastern side of Gerrard Road for approximately 0.7 mile to intersection with Centerville Road (State Road 71); thence in a southwesterly direction along North side of Centerville Road (State Road 71) for approximately one (1) mile to intersection with Five Mile Creek; thence in a southerly direction along the center of Five Mile Creek for approximately 0.7 mile to intersection with New Prospect Church Road; thence along the Northern side of New Prospect Church Road for approximately 0.9 mile to Highway No. 24; thence along the southern side of U. S. Highway No. 24 in a westerly direction approximately 0.7 mile to intersection of Airport Road; thence in a southerly direction along the Eastern side of the Airport Road for approximately 1.5 miles to the intersection of State Road 22; thence in an Easterly direction along the Northern side of State Road 22 for approximately 0.5 mile to the intersection with State Road 258; thence in a southerly direction along the Eastern side of State Road 258 for approximately 1 mile to the intersection with State Road 65; thence in a Southeasterly direction

along the Northeast side of State Road 65 for approximately 1.1 mile to the intersection with U. S. Highway No. 29, point of the beginning.

7. In 2002 the South Carolina General Assembly converted the Company into a statutorily created special purpose district created for the sole purpose of providing water to customers within the District's statutorily mandated service area and territory.

8. The territory and service area of the District were statutorily mandated to be as follows:

Starting at the intersection of U. S. Highway 29 South and State Road 65 (Dow Boulevard near the Badische Plant), thence in a southerly direction along the eastern side of U. S. Highway 29 for approximately 500 feet to a culvert; thence in a westerly direction along the center of said culvert and drainage ditch for approximately 2,400 feet to an existing pond; thence in a southwesterly direction along the center of said pond and tributary to Richland Creek; thence in a westerly direction along the center of Richland Creek to Big Generostee Creek; thence in a southwesterly direction along the center of Big Generostee Creek to the Savannah River; thence in a northwesterly direction along the center of the Savannah River to Hartwell Dam; thence in a northerly direction along the eastern shore of Hartwell Lake to the Carolina & Northwestern Railroad tracks; thence in a southeasterly direction along the center of the tracks for approximately 1 mile to the intersection with Pearman Dairy Road; thence in a westerly direction along the south side of Pearman Dairy Road for approximately 0.1 miles to the intersection with Dunn Road; thence in a southerly direction along the eastern side of Dunn Road to include Lake View Subdivision for approximately 0.6 miles to the intersection with Dixon Road; thence along the eastern side of Dixon Road in a southerly direction for approximately 0.5 miles to the intersection of Gerrard Road; thence along the eastern side of Gerrard Road for approximately 0.7 miles to the intersection with Centerville Road (State Road 71); thence in a southeasterly direction along the north side of Centerville Road (State Road 71) for approximately one (1) mile to the intersection with Five Mile Creek; thence in a southerly direction along the center of Five Mile Creek for approximately 0.7 miles to the intersection of New Prospect Church Road; thence along the northern side of New Prospect Church Road for approximately 0.3 miles to the intersection of Standridge Road; thence in an easterly direction along the north side of Standridge Road and including Fretwell Subdivision approximately 0.9 miles to the intersection of Warner Road; thence in a southerly direction along the eastern side of Warner Road approximately 0.5 miles to the intersection of S. C. Highway 24; thence in an easterly direction along the northern side of S. C. Highway 24 for approximately 1,900 feet to include the present West Anderson meter pit location; thence in a westerly direction back along the southern side of S. C. Hwy. 24 for approximately 950 feet to the Three Mile Creek tributary; thence in a

southwesterly direction along the center of said tributary for approximately 0.7 miles to Three Mile Creek; thence in a southwesterly direction along the center of said creek to Dobbins Bridge Rd. (State Rd. 22); thence in an easterly direction along the north side of Dobbins Bridge Rd. for approximately 1.2 miles to the southernmost entrance road to Greenbriar Subdivision; thence in a southwesterly direction along the southeastern side of Dobbins Bridge Rd. to include Cloverdale Subdivision for approximately 0.8 miles to State Rd. 258; thence in a southerly direction along the eastern side of State Rd. 258 to include Rucker Subdivision for approximately 1 mile to the intersection with State Rd. 65; thence in a southeasterly direction along the northeastern side of State Rd. 65 for approximately 1.1 miles to the intersection with U. S. Hwy. 29, the Point of Beginning.

9. In 2002 the District joined the Anderson County Water Association (now known as the Anderson Regional Joint Water System) ("Joint System"), which is a partnership of rural and municipal water districts providing services to customers in Anderson and Pickens County. The Joint System is comprised of fifteen member agencies, including the City and the District, and was organized under the provisions of S.C. Code, § 6-25-5 et seq., as a joint water system to serve the interests of its members, its citizens, and its customers and to accommodate the desires of its members in projects and financings that affect only its members.

10. On or about March 21, 2002, constituent entities of the Joint System, including the City and the District, entered into a Water Sale and Purchase Agreement (the "Agreement").

11. The Agreement provided in part that the City would serve the "industrial facilities of Michelin" which were located at the time of the Agreement within the District's boundaries.

12. This consent was strictly limited to the provision of services to the existing facilities, and as stated in the Agreement, no further provision of service by the City was to be made "to any customer located within the boundaries" of the District "without the written consent" of the District.

13. At the time of the Agreement, Michelin North America, Inc. ("Michelin") owned and operated a rubber processing plant (hereinafter the "Existing Plant") located entirely within

the boundaries of the District. Michelin owned no other manufacturing plant or other industrial facility within the District's boundaries at the time of the Agreement.

14. Prior to the Agreement, Duke Water Systems, upon information and belief a wholly owned subsidiary of Duke Energy Corporation ("Duke"), provided water to the Existing Plant pursuant to a Water Service Agreement with Michelin dated July 3, 2000.

15. Upon information and belief, Duke sold its rights to the Water Service Agreement to the City.

16. Since the foregoing transaction between Duke and the City, the City has provided water and related services to Michelin's Existing Plant.

17. The City has provided no water or related services to any other customer within the District's service area or territory.

18. In or around April 2012, Michelin announced that it would construct a new facility (hereinafter the "New Facility") to manufacture tires for large construction equipment, which New Facility would be located in the District's service area.

19. The City has indicated that it intends to provide water and related services to the New Facility.

20. The District has informed the City that it objects to the City's provision of water and related services to the New Facility.

FOR A FIRST CAUSE OF ACTION
(Declaratory Relief Pursuant to S.C. Code Ann. § 11-53-10, et seq.)

21. The District incorporates herein the relevant and consistent portions of the preceding paragraphs.

22. S.C. Code Ann. § 5-7-60 provides in part that a municipality may provide services within the boundaries of another governmental entity only if that other governmental entity consents to the provision of such services.

23. The City has indicated that it intends to provide water and related services to the New Facility.

24. The District has informed the City that it objects to the City's provision of water and related services to the New Facility.

25. An actual controversy exists between the parties concerning their respective rights to provide water and related services within the District's service area.

26. The District respectfully seeks a declaration from the Court that:

- a) The City has no rights under the Agreement to provide water or related services to Michelin's New Facility, and therefore, the City's proposed providing of water and related services to the New Facility is improper and illegal;
- b) The City may not sell water or provide related services in the District's service area except to the Existing Facility;
- c) In the alternative, any purported or alleged granting of a portion of the District's service area or territory to the City (which is denied) constitutes an unlawful delegation of governmental authority, is an ultra vires act, and is void and unenforceable; and
- d) Further in the alternative, to the extent that the Agreement purports to transfer a portion of the District's service area or territory to the City

(which is denied), such portion of the Agreement is an unlawful delegation of governmental authority, is ultra vires, is void and is unenforceable.

FOR A SECOND CAUSE OF ACTION
(Equitable and Injunctive Relief)

27. The District incorporates herein the relevant and consistent portions of the preceding paragraphs.

28. As set forth above, it would be improper for the City to provide water or related services to the New Facility.

29. If the courts do not intervene and enjoin the City from taking the actions as described herein, the District will suffer irreparable harm and have no adequate remedy at law.

30. The City should be permanently enjoined pursuant to South Carolina Rules of Civil Procedure 65 from encroaching upon, or further encroaching upon, the District's service area and territory, including the City's proposed providing of water and related services to the New Facility.

WHEREFORE, having fully set forth its allegations against the Defendant herein, the District prays that the Court grant the following relief:

a) That the Court declare the respective rights of the parties consistent with the District's First Cause of Action;

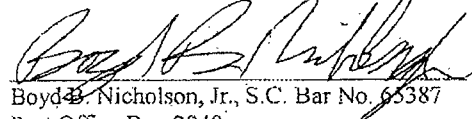
b) That the Court issue an Order restraining and enjoining the City from improperly providing water and related services within the District's service area and territory, including the City's proposed providing of water and related services to the New Facility;

c) That the Court award the District its attorneys' fees and costs in this action; and

d) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd E. Nicholson, Jr., S.C. Bar No. 65387

Post Office Box 2048

Greenville, SC 29602

Tel.: (864) 240-3247 (Telephone)

Fax: (864) 240-3336 (Facsimile)

E-Mail: nnicholson@hsblawfirm.com

Attorneys for the Plaintiff

August 17, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
West Anderson Water District,	)	
Plaintiff,	)	AMENDED ANSWER AND
	)	COUNTERCLAIMS OF
v.	)	DEFENDANT CITY OF ANDERSON
City of Anderson, South Carolina	)	
Defendant.	)	C.A. No. 2012-CP-04-02770
	)	

The Defendant, City of Anderson, South Carolina, by way of answer to Plaintiff's Complaint and counterclaim, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendant, City of Anderson, South Carolina (hereinafter "Anderson"), admits, upon information and belief, so much of the allegations contained in paragraph 1 of Plaintiff's Complaint as alleges that Plaintiff is a special purpose district created for the sole purpose of providing water and related services to customers within its service area and territory and that its service area is located within Anderson County, South Carolina. Anderson denies the remaining allegations contained in paragraph 1 of Plaintiff's Complaint and strict proof is demanded.

2. Anderson admits the allegations contained in paragraphs 2-4 of Plaintiff's Complaint.

3. Anderson lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 5 and 6 of Plaintiff's Complaint, and, therefore, said allegations are denied and strict proof is demanded.

4. Anderson admits, upon information and belief, so much of the allegations contained in paragraph 7 of Plaintiff's Complaint as alleges that Plaintiff elected to become a special purpose district created for the purpose of providing water to customers within its service area and territory and participating in a joint municipal water system in or about 2002. Anderson denies the remaining allegations contained in paragraph 7 of Plaintiff's Complaint and strict proof is demanded.

5. Anderson denies the allegations contained in paragraph 8 of Plaintiff's Complaint.

6. Anderson admits the allegations contained in paragraph 9 of Plaintiff's Complaint.

7. Anderson admits the allegations contained in paragraph 10 of Plaintiff's Complaint and incorporates the Agreement herein by reference for its terms and provisions.

8. Anderson admits so much of the allegations contained in paragraph 11 of Plaintiff's Complaint as alleges that the Agreement provided, in a section entitled "Background and Findings," that Anderson would serve the "industrial facilities of Michelin" which were located at the time of the Agreement within Plaintiff's geographic boundaries. Anderson incorporates the Agreement herein by reference for its terms and provisions. Further answering the allegations contained in paragraph 11, Anderson would allege and show that the Agreement provided that Anderson would, with the express permission of Plaintiff, serve the "areas" described by the Territorial Boundaries shown on the Territorial Map attached to the Agreement as Exhibit D. Specifically, §6.02 of the Agreement provides:

Section 6.02. Territorial Boundaries. In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes, the parties have agreed upon a Territorial Map of the

territories of the parties to this Agreement in order to set out the areas each intends to serve. The Territorial Map is attached hereto as Exhibit D.

A copy of Exhibit D is attached hereto as Exhibit 1 and is made a part hereof by reference. One of the said areas encompassed the Michelin industrial site. Anderson would further allege and show that, since the geographic boundaries of the West Anderson Water District greatly exceeded the territory which encompassed the Michelin industrial site, it was necessary that Anderson agree that it would not serve other customers of the Plaintiff within the boundaries of the West Anderson Water District. Finally, by agreeing that Anderson would serve the areas shown on the Territorial Map, including the area then occupied by Michelin, the permission granted was for service to the areas shown on the Territorial Map regardless of the number of physical buildings that the customer maintained on a given site. In reliance upon the Agreement and Plaintiff's express consent to Anderson's right to serve the Michelin site, Anderson incurred significant costs and expenses in (a) acquiring the necessary infrastructure to serve the site from Duke Energy, (b) purchasing potable water capacity from the Joint System, and (c) upgrading the water system to serve the area. Anderson denies the remaining allegations contained in paragraph 11 of Plaintiff's Complaint.

9. Anderson denies the allegations contained in paragraph 12 of Plaintiff's Complaint.

10. Anderson admits so much of the allegations contained in paragraph 13 of Plaintiff's Complaint as alleges that, at the time of the Agreement, Michelin owned and operated a rubber processing plant that was located within Plaintiff's geographic boundaries. Anderson admits, upon information and belief, so much of the remaining allegations contained in paragraph 13 of Plaintiff's Complaint as allege that Michelin owned no other manufacturing plant or other industrial facility

within Plaintiff's boundaries at the time of the Agreement. Anderson denies the remaining allegations contained in paragraph 13 of Plaintiff's Complaint.

11. Anderson admits the allegations contained in paragraphs 14-17 of Plaintiff's Complaint.

12. Anderson admits, upon information and belief, so much of the allegations contained in paragraph 18 of Plaintiff's Complaint as alleges that, in or around April 2012, Michelin announced that it would construct a new facility to manufacture tires for large construction equipment on the industrial site that Anderson has served with the express consent of Plaintiff since 2002. Anderson denies the remaining allegations contained in paragraph 18 of Plaintiff's Complaint and strict proof is demanded.

13. Anderson admits the allegations contained in paragraphs 19 and 20 of Plaintiff's Complaint.

14. In response to the allegations contained in paragraph 21 of the Plaintiff's Complaint, Anderson incorporates herein by reference its responses set forth above to the allegations contained in paragraphs 1 - 20 of the Plaintiff's Complaint.

15. Anderson admits the allegations contained in paragraph 22 of Plaintiff's Complaint but incorporates S.C. Code Ann. § 5-7-60 herein by reference for its terms and provisions.

16. Anderson admits the allegations contained in paragraphs 23-25 of Plaintiff's Complaint.

17. Anderson denies the allegations contained in paragraph 26 of Plaintiff's Complaint.

18. In response to the allegations contained in paragraph 27 of the Plaintiff's Complaint, Anderson incorporates herein by reference its responses set forth above to the allegations contained in paragraphs 1 – 26 of the Plaintiff's Complaint.

19. Anderson denies the allegations contained in paragraphs 28-30 of Plaintiff's Complaint.

20. Anderson denies each and every allegation contained in Plaintiff's Complaint not hereinabove specifically admitted, modified or explained.

FOR A SECOND DEFENSE

21. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

22. To the extent that the Plaintiff's Complaint makes or attempts to make any tort claims, Anderson pleads the provisions of the South Carolina Tort Claims Act, S.C. Code §15-78-10, (1976 as amended), including all of the immunities, limitations, and defenses granted or preserved by the act. Specifically, Anderson alleges that the Tort Claims Act governs all tort claims against governmental entities and is the exclusive remedy available in an action against a governmental entity or its employees.

FOR A THIRD DEFENSE

23. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

24. As alleged by the Plaintiff, the Water Sale and Purchase Agreement was entered into by the parties in 2002. Anderson would allege that S.C. Code Ann. §15-78-110 provides a two (2) year statute of limitations for any tort claims and that the three (3) year statute of limitation found in

S.C. Code Ann. §15-3-530 applies to all other causes of action. Anderson would therefore allege that Plaintiff's claims are barred by the applicable statute(s) of limitations.

FOR A FOURTH DEFENSE

25. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

26. Plaintiff's claims are barred by the doctrine of laches.

FOR A FIFTH DEFENSE

27. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

28. Plaintiff's claims are barred by the doctrine of waiver. Plaintiff gave its express consent to Anderson to serve the Michelin site in 2002 when the parties entered into the Water Sale and Purchase Agreement.

Handwritten:
JMS
8/9/06

FOR A SIXTH DEFENSE

29. The allegations contained in the defenses hereinabove set forth are incorporated herein and made a part of this defense by reference thereto.

30. Plaintiff's claims are barred by the doctrine of estoppel. Plaintiff gave its express consent to Anderson to serve the Michelin site in 2002 when the parties entered into the Water Sale and Purchase Agreement. Anderson reasonably relied on Plaintiff's express consent when Anderson incurred significant costs and expenses (a) in acquiring the necessary infrastructure to serve the sites from Duke Energy, (b) in purchasing potable water capacity to serve the sites from the Joint System, and (c) in upgrading the existing water system to serve the site. Plaintiff should be

estopped from effectively seeking to withdraw its consent after Anderson has relied to its detriment and prejudice on such consent over a period of almost ten years.

**FOR A SEVENTH DEFENSE AND
BY WAY OF FIRST COUNTERCLAIM**

31. Anderson incorporates herein the allegations contained in its first defense that are consistent with this defense and counterclaim.

32. Anderson is a municipality and political subdivision under the laws of the State of South Carolina.

33. The West Anderson Water District (the "District") is a political subdivision of the State of South Carolina.

34. The District gave its express consent to Anderson to serve the Michelin site in 2002. For some ten years Anderson has reasonably relied on the District's express consent when Anderson incurred significant costs and expenses (a) in acquiring the necessary infrastructure to serve the site from Duke Energy, (b) in purchasing potable water capacity to serve the site from the Joint System, and (c) in upgrading the existing water system to serve the site.

35. Should the Court declare that the District is entitled to serve the Michelin site -- which Anderson will show is not warranted -- it would be inequitable for the District to be enriched by and benefit from Anderson's financial investment by using Anderson's existing water system to serve the site without paying Anderson for its value. As a result, should the District find it necessary to use Anderson's existing water system, Anderson is entitled to damages in an amount equal to the significant costs and expenses that Anderson incurred (a) in acquiring the necessary infrastructure to serve the site from Duke Energy, (b) in purchasing potable

water capacity to serve the site from the Joint System, and (c) in upgrading the existing water system to serve the site.

**FOR AN EIGHTH DEFENSE AND
BY WAY OF SECOND COUNTERCLAIM**

36. Anderson incorporates herein the allegations contained in its first defense that are consistent with this defense and counterclaim.

37. Anderson is a municipality and political subdivision under the laws of the State of South Carolina.

38. The West Anderson Water District (the "District") is a political subdivision of the State of South Carolina.

39. In 2002, the District represented to Anderson that the District could and would consent to Anderson serving the Michelin industrial facilities and site which were located at the time of the Agreement within the District's geographic boundaries. Based on the allegations contained in the District's Complaint, Anderson alleges, on information and belief, that the District owed a duty of care to Anderson to assure that the representation was truthful, that the District was negligent and breached that duty and the representation made by the District was in fact false, and that the representation was made to further the District's pecuniary interest by inducing Anderson to enter into the Agreement.

40. Anderson further alleges that it justifiably relied upon the District's representation when it entered into the Agreement and when it incurred significant costs and expenses (a) in acquiring the necessary infrastructure to serve the site from Duke Energy, (b) in purchasing potable water capacity to serve the site from the Joint System, and (c) in upgrading the existing water system to serve the site. Should the Court declare that the District is entitled to serve the Michelin

site – which Anderson will show is not warranted – Anderson will suffer damages as a proximate result of the District's negligent misrepresentation in an amount equal to the costs and expenses that Anderson incurred (a) in acquiring the necessary infrastructure to serve the site from Duke Energy, (b) in purchasing potable water capacity to serve the site from the Joint System, and (c) in upgrading the existing water system to serve the site.

**FOR AN NINTH DEFENSE AND
BY WAY OF THIRD COUNTERCLAIM**

41. Anderson incorporates herein the allegations contained in its first defense that are consistent with this defense and counterclaim.

42. Anderson is a municipality and political subdivision under the laws of the State of South Carolina.

43. The West Anderson Water District (the "District") is a political subdivision of the State of South Carolina.

44. An actual controversy exists between the parties concerning Anderson's rights under the Agreement to provide water and related services to the Michelin site.

45. Pursuant to §§ 15-53-10 *et seq.* of the S.C. Code of Laws Ann., Anderson respectfully seeks a declaration from the Court that, until the Agreement is terminated:

- a. Anderson is entitled to provide water and related services to the Michelin site as that site is described and shown on the Territorial Map attached to the Agreement as Exhibit D (and a copy of which is attached hereto as Exhibit 1) and

- b. Anderson's right to provide water and related services to the Michelin site includes but is not limited to providing such services to Michelin's Existing Facility and Michelin's New Facility.

WHEREFORE, having fully answered the Plaintiff's Complaint herein, the Defendant, City of Anderson, South Carolina, prays that the same be dismissed, that the Court enter judgment in its favor on its counterclaims, and for such other and further relief as this Court deems just and proper.



Frank H. Gibbes, III (#2461)
Gibbes Burton, LLC
303 East St. John Street
Spartanburg, SC 29302
fgibbes@gibbesburton.com
(864) 327-5000
(864) 327-5001 (fax)

ATTORNEYS FOR THE DEFENDANT

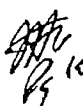
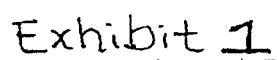
 10
October 19, 2012
Spartanburg, South Carolina

EXHIBIT 1

gfr
pg 11



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
West Anderson Water District,)
Plaintiff,)
v.)
City of Anderson, South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-04-02770

REPLY TO COUNTERCLAIMS
OF THE DEFENDANT

TRUE COPY
NOV 20 2012

Richard D. Bailey
CLERK OF COURT

The Plaintiff, West Anderson Water District (hereinafter "District"), answering the Counterclaims of the Defendant, City of Anderson (hereinafter "City"), would respectfully allege and show as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Paragraphs 1 through 31 of the City's Counterclaims are responses to the District's Complaint, and therefore do not require a response from the District. To the extent, however, that such allegations do require a response from the District, such allegations are denied.

2. The District admits paragraph 32 of the City's Counterclaims.

3. The District admits paragraph 33 of the City's Counterclaims.

4. Responding to paragraph 34 of the City's Counterclaims, the District admits that in the 2002 Water Sale and Purchase Agreement (the "Agreement"), the District agreed to the following:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin,

which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

The District lacks sufficient information concerning the City's allegations that it reasonably relied upon the "express consent" as alleged in paragraph 34 (which if different from the foregoing block quote are denied), and therefore, the District denies the same and demands proof thereof. The District denies the remaining allegations of paragraph 34.

5. The District denies paragraph 35 of the City's Counterclaims.

6. Responding to paragraph 36 of the City's Counterclaims, the District incorporates herein the relevant and consistent portions of the preceding paragraphs.

7. The District admits paragraph 37 of the City's Counterclaims.

8. The District admits paragraph 38 of the City's Counterclaims.

9. Responding to paragraph 39 of the City's Counterclaims, the District admits that in the Agreement the District agreed to the following:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

Any allegations in the first sentence of paragraph 39 of the City's Counterclaims that conflict with the foregoing block quote are denied. The District denies the remaining allegations of paragraph 39 of the City's Counterclaims.

10. Responding to the first sentence of paragraph 40 of the City's Counterclaims, the District lacks sufficient information with which to respond to this allegation, and therefore, the District denies the same and demands proof thereof. The District denies the remaining allegations of paragraph 40 of the City's Counterclaims.

11. Responding to paragraph 41 of the City's Counterclaims, the District incorporates herein the relevant and consistent portions of the preceding paragraphs.

12. The District admits paragraph 42 of the City's Counterclaims.

13. The District admits paragraph 43 of the City's Counterclaims.

14. The District admits paragraph 44 of the City's Counterclaims.

15. The District denies paragraph 45, and all subparts thereto, of the City's Counterclaims.

16. Each and every allegation of the City's Counterclaims not heretofore expressly admitted, modified or explained is denied.

FOR A SECOND DEFENSE
(Sovereign Immunity)

17. The District incorporates herein the relevant and consistent portions of the preceding paragraphs.

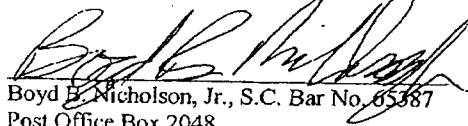
18. The City's tort claims against the District, if any, are barred by the doctrine of sovereign immunity and/or the South Carolina Tort Claims Act, S.C. Ann. § 15-78-10 *et. seq.*

WHEREFORE, having answered the Counterclaims of the City of Anderson herein, the West Anderson Water District respectfully requests that the Court dismiss the City's

Counterclaims with prejudice, that the Court grant the relief requested in the District's Complaint, and that the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd E. Nicholson, Jr., S.C. Bar No. 65387

Post Office Box 2048

Greenville, SC 29602

Tel.: (864) 240-3247 (Telephone)

Fax: (864) 240-3336 (Facsimile)

E-Mail: nnicholson@hsblawfirm.com

Attorneys for the Plaintiff

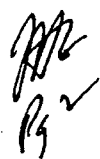
November 19, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA,	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
West Anderson Water District,	)	
Plaintiff,	)	CITY OF ANDERSON'S MOTION
	)	FOR SUMMARY JUDGMENT
v.	)	
City of Anderson, South Carolina	)	C.A. No. 2012-CP-04-02770
Defendant.	)	

Defendant City of Anderson, South Carolina (the "City") moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting summary judgment in its favor as a matter of law. This motion is based on the following grounds:

1. There is no genuine issue as to any material fact.
2. The City, the West Anderson Water District (the "District"), the Anderson County Joint Municipal Water System (the "ACJMWS"), and other members of the ACJMWS entered into a Water Sale and Purchase Agreement dated as of March 21, 2002 (the "Agreement").
3. "In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes....," the parties to the Agreement "agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve." The Territorial Map shows the service area to be served by the City which includes the site on which the industrial facilities of Michelin North America, Inc. ("Michelin") are located.

Handwritten signature/initials

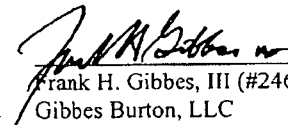
- 
4. Under the terms of the Agreement the City is entitled to provide potable water and related services to Michelin facilities located on the Michelin site.
 5. At the time the City and the District entered into the Agreement, Michelin was a party to a Water Service Agreement (the "WSA") with Duke Water Systems ("Duke") dated July 3, 2000. Duke assigned the WSA to the City on April 17, 2002, as part of the City's purchase of Duke's retail water system. The City has been providing continuous potable water services to Michelin facilities located on the Michelin site under the terms of the WSA since its assignment to the City.
 6. In or about April 2012, Michelin announced that it would construct a new facility to manufacture tires for large construction equipment on the Michelin site that the City has served with the express consent of the District since 2002. The City intends to serve Michelin's new facility as contemplated by the Agreement.
 7. There is no evidence in the record that would entitle the District to a declaration that the City cannot provide potable water services to Michelin's industrial facilities located on the Michelin site.
 8. There is no evidence in the record that would entitle the District to injunctive relief barring the City from providing potable water services to Michelin's industrial facilities located on the Michelin site.
 9. There is no evidence in the record that supports a finding by the Court that the District's consent to the City providing potable water services to Michelin's industrial facilities located on the Michelin site is an unlawful delegation of

governmental authority, ultra vires, or void and unenforceable. Such consent is specifically authorized pursuant to S.C. Code Ann. §§ 5-7-60 and 6-25-5 et seq. In fact, the District reaffirmed its prior consent to the City serving existing facilities located on the Michelin site in the District's answers to the City's interrogatories. (A copy of the District's Answer to City Interrogatory #14 is attached hereto as Exhibit A and incorporated herein by reference).

10. The City is entitled to an order granting summary judgment in its favor as a matter of law.

This motion is based upon the pleadings filed in this action, upon affidavits and discovery responses filed herewith, and upon applicable common and statutory law.

Handwritten initials and number:
JTB
Pg 3



Frank H. Gibbes, III (#2461)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
fgibbes@gibbesburton.com
(864) 327-5000
(864) 327-5001 (fax)

ATTORNEYS FOR THE DEFENDANT

December 26, 2012
Spartanburg, South Carolina

EXHIBIT A

gms
Pg 4

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-04-02770

West Anderson Water District,)
Plaintiff,)
v.)
City of Anderson, South Carolina,)
Defendant.)

**ANSWERS TO DEFENDANT'S
FIRST INTERROGATORIES TO PLAINTIFF**

**TO: CITY OF ANDERSON, SOUTH CAROLINA, DEFENDANT, AND ITS
ATTORNEY, FRANK H. GIBBES, III, ESQ.**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff answers
Defendant's First Interrogatories to Plaintiff, as follows:

INTERROGATORY NO. 1: Give the names and addresses of persons known to
Plaintiff or counsel to have knowledge concerning the facts of the case and indicate whether or
not written or recorded statements have been taken from such persons and indicate who has
possession of such statements.

ANSWER:

1. Steve Wilson
West Anderson Water District
2767 White Hall Road
Anderson, SC 29625

Mr. Wilson is the District's General Manager and also held that position when the
Agreements were being negotiated. He has knowledge of those negotiations and
the District's role in same.

2. Lamar McLeod
3. J.T. Hopkins

EXHIBIT A

INTERROGATORY NO. 13: Please describe with specificity the legal and factual basis for the assertion, in ¶ (c) of the prayer for relief in your Complaint, that the District is entitled to an award of "attorneys' fees and costs."

ANSWER: S.C. Code Ann. § 15-77-300.

INTERROGATORY NO. 14: Please identify by author, addressee (if any), title, date, and brief description each document, memorandum, or other writing prepared by, for, or on behalf of the District and its officers, employees, and/or agents which discusses or otherwise addresses the District's assertion that the City is not entitled to provide service to Michelin's Existing Plant and/or New Facility.

ANSWER: The District does not argue that the City should not provide service to Michelin's Existing Plant. The District does contend that it is improper for the City to provide service to Michelin's New Facility. With respect to this contention see Steve Wilson's letter sent to the City of Anderson on June 22, 2012.

INTERROGATORY NO. 15: Please state whether the District contends that Michelin's New Facility will not be located, in whole or in part, on the Michelin Site. If so, please describe the factual basis for such contention.

ANSWER: The area that the City purports to be the "Michelin Site" on Exhibit I of the City's Amended Answer and Counterclaims is not an accurate representation of that property. However, it appears that the facility currently under construction is within the colored area purporting to be the "Michelin Site."

INTERROGATORY NO. 16: Please state whether Plaintiff or anyone acting on behalf of Plaintiff, has contacted Michelin concerning providing potable water service to Michelin's

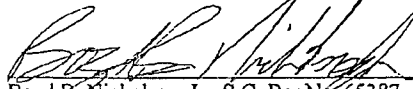
Existing Plant and/or New Facility. If so, identify the date, the means of communication, and the participants.

ANSWER: William McCoy and Steve Wilson spoke with Mike Armor of Michelin at a meeting at Tucker's Restaurant.

The District reserves the right to amend these responses.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., S.C. Bar No. 65387

Post Office Box 2048

Greenville, SC 29602

Tel.: (864) 240-3247 (Telephone)

Fax: (864) 240-3336 (Facsimile)

E-Mail: nnicholson@hsblawfirm.com

Attorneys for the Plaintiff

208
Pg 7

November 30, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
West Anderson Water District,	)	
	)	AFFIDAVIT OF
Plaintiff.	)	JOHN R. MOORE, JR.
	)	
v.	)	
	)	C.A. No. 2012-CP-04-02770
City of Anderson, South Carolina	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, John R. Moore, Jr., who, being duly sworn, states as follows:

1. I am a resident of Anderson County, South Carolina. I currently serve as the City Manager for the City of Anderson (the "City") and have held this position since 1991.
2. In late 2001 and early 2002, I participated in the negotiations by which the City acquired certain retail assets of Duke Energy Corporation ("Duke") and became a member of the Anderson County Joint Municipal Water System ("ACJMWS") (now called the Anderson Regional Joint Water System).
3. On February 20, 2002, the West Anderson Water District (the "District") and other water districts entered into a Second Amendment to Asset Purchase Agreement with Duke. In the amended agreement the District expressly approved Duke selling "the retail portion of the water system to the City of Anderson, South Carolina." Included in the amended agreement with Duke is a "Service Area Boundary Description" and map outlining the City's service area, which encompasses the site on which the industrial facilities of Michelin North America, Inc. ("Michelin") are located. A true and correct copy of excerpts from the Second Amendment to

Asset Purchase Agreement, including the Service Area Boundary Description and map, is attached hereto as Exhibit A and incorporated herein by reference.

4. On February 20, 2002, the City entered into an Asset Sale Agreement with Duke whereby it purchased transmission lines, storage tanks, and related facilities generally comprising Duke's retail water system. Included in the agreement with Duke is a "Service Area Boundary Description" and map outlining the City's service area, which encompasses the site on which the industrial facilities of Michelin are located. A true and correct copy of excerpts from the Asset Sale Agreement, including the Service Area Boundary Description and map, is attached hereto as Exhibit B and incorporated herein by reference.

5. As part of the City's purchase, Duke assigned to the City the Water Service Agreement (the "WSA") between Duke and Michelin dated July 3, 2000. A true and correct copy of the WSA is attached hereto as Exhibit C and incorporated herein by reference.

6. On March 21, 2002, the City, the District, the ACJMWS, and other members of the ACJMWS entered into a Water Sale and Purchase Agreement (the "Agreement").

7. Under the terms of the Agreement, each member of the ACJMWS agreed to purchase water from the ACJMWS to provide service to customers located within its defined service area. "In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes....," the parties to the Agreement "agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve."

8. As shown by the Territorial Map, the service area assigned to the City includes the site on which the industrial facilities of Michelin are located. A true and correct copy of excerpts from the Agreement, including the Territorial Map, is attached hereto as Exhibit D and incorporated herein by reference.

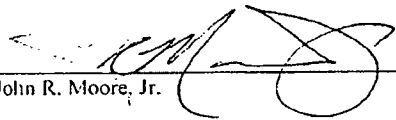
9. As part of the Agreement, the District expressly consented to the City providing potable water and related services to "the industrial facilities of Michelin."

10. The City has been providing potable water and related services to Michelin facilities located on the Michelin site under the terms of the WSA and the Agreement continuously since 2002.

11. During the period from February 20, 2002 to the present, the City reasonably relied on the District's express consent when the City incurred significant costs and expenses (a) in acquiring the necessary infrastructure to serve the Michelin site from Duke, (b) in purchasing potable water capacity to serve the Michelin site from the ACJMWS, and (c) in upgrading the existing water system to serve the Michelin site.

12. In or about April 2012, Michelin announced that it would construct a new facility to manufacture tires for large construction equipment on the Michelin site that the City has serviced since 2002. The new facility is located within the service area originally allocated to the City in the Agreement as shown on the Territorial Map. A true and correct copy of a map illustrating the location of the new facility and its inclusion in the City's service area is attached hereto as Exhibit E and incorporated herein by reference.

13. Based upon my understanding of the Agreement, the City is entitled to provide potable water and related services to all Michelin industrial facilities located on the Michelin site. As a result, the City intends to provide service to Michelin's new facility in the same manner as it has provided service to Michelin's other industrial facilities located on the Michelin site continuously since 2002.


John R. Moore, Jr.

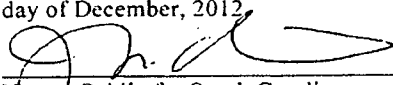
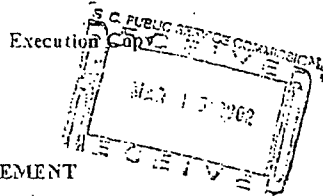
Sworn to before me this 21st
day of December, 2012.

Notary Public for South Carolina
My Commission Expires: 8/11/14

EXHIBIT A



SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT, dated as of the 20th day of February, 2002 (this "Amendment"), is between Duke Energy Corporation, a North Carolina corporation (the "Seller"), Anderson County Joint Municipal Water System, a public body corporate and politic of the State of South Carolina (the "Purchaser"), and the following members of the Purchaser (the "Members"): Big Creek Water and Sewerage District and Broadway Water and Sewerage District, each of which is a public body corporate and politic of the State of South Carolina; and Hammond Water District (formerly, Hammond Water Company); Powdersville Water District (formerly, Powdersville Water Company); Sandy Springs Water District (formerly, Sandy Springs Water Company); Starr-Iva Water and Sewer District (formerly Starr-Iva Water Company); and West Anderson Water District (formerly, West Anderson Water Company), each of which is a public body corporate and politic of the State of South Carolina that was formerly a South Carolina non-profit corporation. This Amendment amends the Asset Purchase Agreement (the "Purchase Agreement"), dated as of February 14, 2000, between the Seller and the Members, as amended by the First Amendment to Asset Purchase Agreement dated August 1, 2001 (the "First Amendment").

BACKGROUND STATEMENT

Pursuant to the Purchase Agreement, the Purchaser agreed to purchase from the Seller, and the Seller agreed to sell to the Purchaser, the Seller's water system in Anderson County, South Carolina, through a purchase and sale of substantially all of the system's assets. The parties have agreed to amend the Purchase Agreement to sell the wholesale portion of the water system to the Purchaser and to sell the retail portion of the water system to the City of Anderson, South Carolina.

The Purchaser, the Members and the Seller desire to amend the Purchase Agreement as provided herein.

STATEMENT OF AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Capitalized Terms. Capitalized terms used herein without definition shall have the meanings given to them in the Purchase Agreement.

08.25.12 City 000128

5000170

ARTICLE II
AMENDMENTS

2.1 Purchase Price. Section 3.1 of the Purchase Agreement is hereby amended to reduce the Base Purchase Price from \$68,000,000 to \$47,870,000.

2.2 Conveyance to City of Anderson. The Purchaser acknowledges that the Seller intends to enter into an asset sale agreement dated as of the date hereof (the "Anderson Sale Agreement") with the City of Anderson ("Anderson") to convey directly to Anderson those Assets described on Exhibit A attached hereto (the "Retail Assets") for a purchase price of \$15,580,000. In addition, the Purchaser acknowledges that (i) the Anderson Sale Agreement contains a provision under which Anderson may request that the Seller purchase for Anderson's benefit certain vehicles (the "Retail Vehicles") that Seller currently leases for use in connection with the Retail Assets and (ii) upon such purchase the Retail Vehicles shall constitute "Retail Assets." The Retail Assets shall be deemed to be included in the definition of Excluded Assets (as defined in Section 2.2 of the Purchase Agreement).

2.3 Accounts Receivable.

(a) The definition of Accounts Receivable in the Purchase Agreement is hereby amended to read as follows:

"Accounts Receivable" means any and all amounts due and owing to the Seller arising out of the Seller's water system in Anderson County, South Carolina, as the term "accounts receivable" is understood under GAAP. The term "Accounts Receivable" shall include the value of all unbilled water service provided as of the relevant date of determination, regardless of whether such value would be considered accounts receivable under GAAP.

(b) No Accounts Receivable shall be conveyed to the Purchaser and all such Accounts Receivable shall instead be included in the Excluded Assets.

2.4 Retention of Liabilities. The Purchaser shall not assume the Liabilities of the Seller reflected on the Interim Schedule of Assets and Liabilities or the Liabilities of the Seller arising out of the operation of the Business in the ordinary course after the date of the Interim Schedule of Assets and Liabilities.

2.5 Purchase Price Adjustment. The Base Purchase Price shall not be adjusted by the current assets or current liabilities of the Business and shall instead only be adjusted by adding to the Base Purchase Price the Capital Expenditures shown on the Capital Expenditures Schedule. The "Purchase Price Adjustment" shall refer to the increase to the Base Purchase Price for such Capital Expenditures.

2.6 Post-Closing Adjustment. No Closing Schedule of Assets and Liabilities shall be prepared. The Purchaser shall have forty-five days after the Closing Date to audit the Capital Expenditures Schedule in accordance with Section 3.6(a) of the

08.25.12 City 000129

5000171

08.25.12 City 000129

EXHIBIT A

RETAIL ASSETS

The Retail Assets consist of the following:

(a) All water mains and pipes used in the Seller's water system in Anderson County, South Carolina that are (i) owned by the Seller or in which the Seller has an ownership interest and (ii) located within the area described on Schedule 1 attached hereto, but excluding the water mains and pipes described on Schedule 2 attached hereto (the water mains and pipes that are included in the Retail Assets are referred to herein as the "Retail Mains and Pipes");

(b) All recorded and unrecorded water distribution and water transmission easements, rights of way and rights of encroachment to the extent the same contain (but only to the extent the same contain) Retail Mains and Pipes and are: (i) owned by the Seller or in which the Seller has an ownership interest; (ii) located within the area described on Schedule 1 attached hereto; and (iii) used by the Seller in connection with the Retail Mains and Pipes;

(c) All fire hydrants, meters and valves that are (i) owned by the Seller or in which the Seller has an ownership interest and (ii) connected to and served by the Retail Mains and Pipes;

(d) The fixed assets listed on Schedule 3 attached hereto;

(e) The Real Property (including the improvements thereon) listed on Schedule 4 attached hereto;

(f) All of the Seller's rights under all Contracts relating exclusively to the Retail System, including those Contracts listed on Schedule 5 attached hereto, other than any rights arising as a result of the breach of any such Contracts prior to the Closing Date and other than any Excluded Contracts;

(g) All of the Seller's books, files, records, documents, data, plans, proposals and all other recorded knowledge, whether in written, electronic, visual or other form, related exclusively to the Retail Business; and

(h) All Accounts Receivable, except for Accounts Receivable owing by Upstate Heater Utilities, Inc. and the following customers of the Seller's water system in Anderson County, South Carolina: Big Creek Water and Sewage District, Broadway Water and Sewage District, Hammond Water District, Powdersville Water District, Sandy Springs Water District, Starr-Iva Water and Sewer District, West Anderson Water District, City of Clemson, Clemson University, Homeland Park Water and Sewage District, Town of Williamston and Town of Pendleton.

08.25.12 City 000137

5000179

Schedule 1
to
Exhibit A

Description and Geographic Area of Retail Mains and Pipes

The retail mains and pipes are located within the retail service area shown in gray on the attached map and as described below:

Service Area Boundary Description: Beginning where U.S. Highway 76 & S.C. Highway 28 crosses Lake Hartwell, thence eastwardly approximately four tenths of a mile along the Six and Twenty Arm of Lake Hartwell to the eastern property line of Middleton Shores S/D, thence southwardly along said property line to Old Mill Road, thence southeastwardly along Old Mill Road and extending one lot deep on the southern side of Old Mill Road until its intersection with U.S. 178, crossing Brown Road and continuing to Fritz Drive, thence northeastwardly along Fritz Drive approximately three tenths of a mile, then due east approximately three tenths of a mile to a ditch, thence northwardly along said ditch approximately three tenths of a mile to a tributary of Town Creek, thence southeastwardly along said tributary approximately four tenths of a mile to a point being common with the Anderson City Limits, thence northeastwardly approximately four tenths of a mile to the intersection of Kings Road and Hobson Road, thence southeastwardly along Hobson Road approximately six tenths of a mile to the property line of Peppertree S/D, thence southwestwardly, southeastwardly, and northeastwardly, all along the boundary of Peppertree S/D and back to Hobson Road, thence continuing southeastwardly along Hobson Road approximately two tenths of a mile to Concord Road, thence northeastwardly along Concord Road to Edgebrook Drive, thence southeastwardly along Edgebrook Drive approximately seven tenths of a mile, thence due south approximately four tenths of a mile to the curve in Cardinal Circle, thence along Cardinal Circle to the property line of Marcdon Place S/D, thence along the property line boundaries of Marcdon Place S/D in westerly, northwesterly, southwesterly and southeasterly directions to the western most property line of Cardinal Park, and thence along western most Cardinal Park property line to Reed Road, thence eastwardly along Reed Road to S.C. Highway 81, thence southwardly along S.C. Highway 81 approximately one fourth of a mile to Simpson Road, thence along the property line boundary of the Bi-Lo Shopping Center in southwesterly, southeasterly and northeasterly directions back to Simpson Road approximately two tenths of a mile from S.C. Highway 81, thence southeastwardly along Simpson Road to Calhoun Street Extension, thence southwestwardly along Calhoun Street Extension approximately four tenths of a mile to a branch of Bailey Creek, thence southeastwardly along the branch through Rankins Lake to Bailey Creek, thence southwestwardly along Bailey Creek to Rogers Road, thence eastwardly along Rogers Road to Old Williamston Road, thence southwestwardly along Old Williamston Road approximately three tenths of a mile to Highland Acres S/D, thence approximately one mile along the western property line of Highland Acres S/D crossing Rocky River (*ending common boundary with Hammond and beginning with Broadway*) and along the northeastern property line of Cedar Ridge S/D to U.S. Highway 29, thence northeastwardly along U.S. Highway 29 to Plantation Road, thence southwardly along Plantation Road to Bellhaven Road, thence eastwardly along

08.25.12 City 000139

5000181

Bellhaven Road to Cypress Lane, thence southwardly along Cypress Lane to Bolt Drive, thence northwestwardly along Bolt Drive back to Plantation Road and including Forest Hill Chapel, thence southwardly along Plantation Road to Sansbury Drive, thence northwestwardly along Sansbury Drive to Fairfield Drive, thence southwestwardly along Fairfield Drive to U.S. Highway 76 & 178, thence northwestwardly approximately three tenths of a mile along U.S. Highway 76 & 178 to the southernmost property boundary of Anderson Garden Apartments (*ending common boundary with Broadway and beginning with Homeland Park*), thence southwestwardly along said property line to Rocky River, thence northwestwardly along Rocky River to a branch stream located behind New Silverbrook Cemetery, thence southwestwardly approximately six tenths of a mile along said branch to White Street Extension, thence northwestwardly along White Street Extension to Shockley Ferry Road, thence northeastwardly along Shockley Ferry Road approximately four tenths of a mile to Cemetery Road, thence northwestwardly along Cemetery Road approximately one tenth of a mile to the Piedmont Northern Railroad rights-of-way, thence southwestwardly along said railroad rights-of-way approximately eight tenths of a mile to S. McDuffie Street, thence northwestwardly along S. McDuffie Street to Pecan Drive, thence along Pecan Drive to S. Main Street, thence southwardly approximately three and six tenths miles along S. Main Street, Hunt Street, Hillman Drive, and then cross country to and including all of the Wellington Mill property and to and including all of the Owens Corning Fiber Plant property and then back to Major Road, thence northwestwardly along Major Road approximately one tenth of a mile to the intersection of S.C. Highway 28 Bypass and S. Murray Avenue, thence northwestwardly along S.C. Highway 28 Bypass to Sayre Street, thence southwestwardly approximately two and one half miles along Sayre Street and U.S. Highway 29 down to and including the BASF Plant property and Michelin Plant property and then back to U.S. Highway 28 Bypass, thence northwestwardly approximately six tenths of a mile to Generostee Creek, thence southwestwardly approximately eight tenths of a mile to a branch of Generostee Creek (*ending common boundary with Homeland Park and beginning with West Anderson*), thence northwestwardly along said branch to Monitor Drive, thence westwardly along Monitor Drive to Y'all Road, thence northwestwardly along Y'all Road to Dobbins Bridge Road, thence in a northeasterly direction along Dobbins Road on the southeastern side of Dobbins Bridge Road to the western most entrance of Greenbrier Subdivision thence in a westerly direction along the northside of Dobbins Bridge Road to Michelin Blvd., thence northeastwardly along Michelin Boulevard to Three Mile Creek, thence northeastwardly along Three Mile Creek to S.C. Highway 24, thence westwardly along S.C. Highway 24 to Warner Road, thence northwardly along Warner Road to Standridge Road, thence westwardly along Standridge Road to Fretwell S/D, thence northwestwardly, southwestwardly and southeastwardly all along the boundaries of said S/D back to Standridge Road, thence westwardly along Standridge Road to New Prospect Church Road, thence northwestwardly approximately three tenths of a mile to Five Mile Creek, thence northeastwardly along Five Mile Creek to Centerville Road, thence northwestwardly along Centerville Road crossing Whitehall Road to Gerrard Road, thence northerly along Gerrard Road to Dixon Road, thence northwestwardly along Dixon Road to Dunn Road, thence northerly along Dunn Road to Old Pearman Dairy Road and the Southern Railroad tracks and rights-of-way, thence northerly along the Southern Railroad rights-of-way to Lake Hartwell, and thence northeastwardly along the Six and Twenty Arm of Lake Hartwell

08.25.12 City 000140

5000182

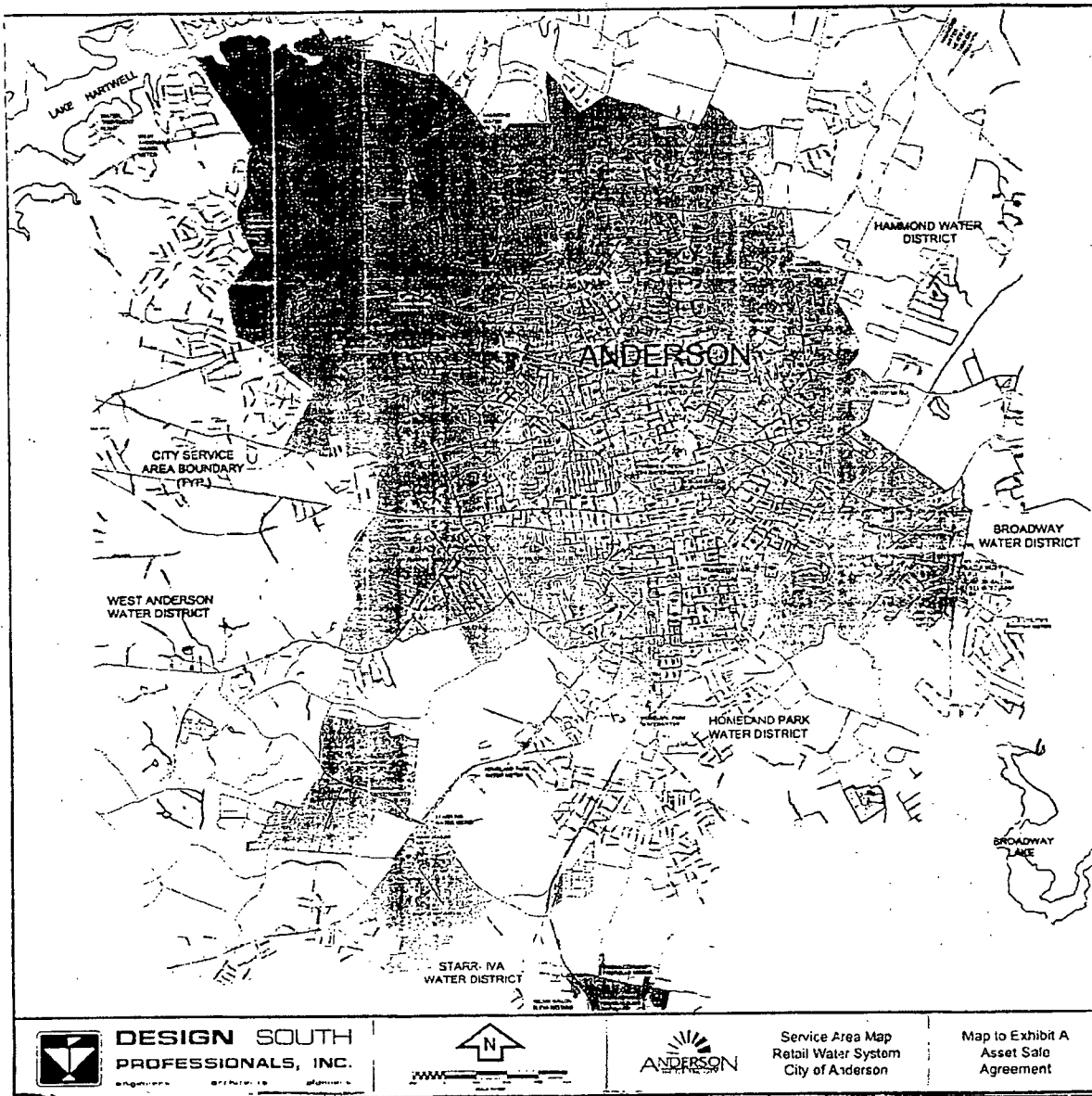
back to where U.S. Highway 76 & S.C. Highway 28 crosses Lake Hartwell.

Because the map attached hereto which depicts the retail service area of the City of Anderson may not be drawn to scale, in the event of a discrepancy between such map and the description provided above, such description shall control the actual retail service area boundary.

C:\5664\001 08.25.12 01092

08.25.12 City 000141

5000183



Schedule 5
to
Exhibit A

Certain Contracts and Arrangements

Water Service Agreements

1. Memorandum of Agreement, dated April 4, 1967, by and between Duke Power Company and Dow Badische Company.
2. Water Service Agreement, dated April 1, 1990, by and between Duke Power Company and Owens-Corning Fiberglas Corporation.
3. Water Service Agreement, dated April 7, 1995, by and between Duke Power Company and Plastic Omnium Industries, Inc..
4. Memorandum of Agreement, dated December 12, 1977, by and between Duke Power Company and Stualter Chemical Company.
5. Agreement, dated August 10, 1987, by and between Duke Power Company and Culp Woven Velvets, Inc.
6. Water Service Agreement, dated July 3, 2000, by and between Duke Water Systems and Michelin North America, Inc.

Other Contracts and Agreements

1. All outstanding commitments made to extend service exclusively related to the Retail Business and all existing and unexpired refund agreements exclusively related to the Retail Business entered into pursuant to the Duke Power Company Water Department Service Regulations, dated July 10, 1990, filed with the South Carolina Public Service Commission.
2. Fire Protection Water Service Agreement, dated January 27, 1989, by Duke Power Company and Anderson Tie Station.²

² The rights and obligation of Anderson Tie Station are to remain with the Seller.

08.25.12 City 000146

5000183

EXHIBIT B

Execution Copy

ASSET SALE AGREEMENT

by and between

DUKE ENERGY CORPORATION

and

THE CITY OF ANDERSON

Dated as of February 20, 2002

ASSET SALE AGREEMENT

THIS ASSET SALE AGREEMENT (this "Agreement"), dated as of the 20th day of February, 2002, is between Duke Energy Corporation, a North Carolina corporation (the "Seller"), and The City of Anderson, an incorporated city in the State of South Carolina (the "Buyer").

BACKGROUND STATEMENT

Pursuant to that certain Asset Purchase Agreement dated as of February 14, 2000, by and between Anderson County Joint Municipal Water System (the "Joint System") (which assumed, with certain exceptions, the obligations thereunder of the members of the Joint System) and the Seller, as amended by the First Amendment to Asset Purchase Agreement dated as of August 1, 2001, and the Second Amendment to Asset Purchase Agreement, dated as of the date hereof (as the same may be further amended, modified, restated or supplemented from time to time, the "Joint System Agreement"), the Joint System agreed to purchase from the Seller, and the Seller agreed to sell to the Joint System, the Seller's water system in Anderson County, South Carolina, (the "Duke Water System") through a purchase and sale of substantially all of the system's assets. The system's assets include the assets that are described on Exhibit A attached hereto (the "Retail Assets"). The Buyer desires to purchase the Retail Assets directly from the Seller upon the terms and subject to the conditions contained herein, and the Joint System desires that the Seller sell the Retail Assets directly to the Buyer.

STATEMENT OF AGREEMENT

In consideration of the mutual representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Capitalized Terms. As used in this Agreement, the following terms have the following meanings:

"Accounts Receivable" means any and all amounts due and owing to the Seller arising out of the Duke Water System, as the term "accounts receivable" is understood under GAAP, except for accounts receivable owing by Upstate Heater Utilities, Inc. and the following customers of the Duke Water System: Big Creek Water and Sewage District, Broadway Water and Sewage District, Hammond Water District, Powdersville Water District, Sandy Springs Water District, Starr-Iva Water and Sewer District, West Anderson Water District, City of Clemson, Clemson University, Homeland Park Water and Sewage District, Town of Williamston and Town of Pendleton. The term "Accounts Receivable" shall include the value of all unbilled

09-06-2012 09:09:09

09.06.12 City 000007



5000035

ARTICLE II

CONTEMPLATED TRANSACTIONS

2.1 Purchase of Retail Assets. On the Closing Date, the Seller shall sell and deliver to the Buyer, and the Buyer shall purchase from the Seller, all of the Seller's right, title and interest in and to the Retail Assets.

2.2 Assumption of Liabilities.

(a) Assumed Liabilities. On the Closing Date, the Buyer shall assume, and thereafter timely pay and perform, the following obligations and liabilities of the Seller (the "Assumed Liabilities"):

(i) the Liabilities arising out of the operation of the Retail Business from and after the Closing Date; and

(ii) the obligations from and after the Closing Date under all of the Contracts other than the Excluded Contracts.

(b) No Other Assumed Liabilities. Except as set forth in Section 2.2(a) above or as otherwise expressly provided herein, the Buyer shall not assume or become liable for the payment or performance of any Liabilities of the Seller.

2.3 Procedures for Non-Transferable Assets. If any Contracts included among the Retail Assets are not assignable or transferable either by virtue of the provisions thereof or under applicable law without the consent of some other party or parties, the Seller and the Buyer shall use commercially reasonable efforts to obtain such consents prior to the Closing Date. If any such consents cannot be obtained, the parties intend that the Buyer nevertheless receive the economic benefits of, and perform the obligations under, such Contracts as if such Contracts have been assigned to the Buyer. Accordingly, the Seller agrees to subcontract such Contracts to the Buyer at the price specified in each such Contract without any additional mark-up and on the same terms and conditions, and the Buyer shall be responsible for the costs associated with the performance of such Contracts and shall be entitled to and shall receive all the revenues from such Contracts. If subcontracting any such Contract is not permitted, the Seller shall cooperate with the Buyer in any reasonable arrangement designed to give to the Buyer the benefits of and obligations under such Contract.

2.4 Real Property Rights

(a) In the special warranty deeds conveying the Real Property to the Buyer, the Seller shall reserve to itself appropriate rights of way and easements in the Real Property (i) for the purpose of operating and maintaining power distribution and transmission lines and other power distribution and transmission assets and for other purposes customarily contained in power utility easements and rights of way; and (ii) for access by the Seller to any of the Seller's real property that will be subdivided and retained by the Seller (the "Retained Real Property").

C:\43325\09_0121\0109

09.06.12 City 000013

5000091

(b) In the special warranty deeds conveying the Real Property to the Buyer, the Seller shall grant to the Buyer appropriate rights of way and easements in the Retained Real Property (i) for the purpose of operating and maintaining the distribution system of the Retail Business and for other purposes customarily contained in water utility easements and rights of way and (ii) for access by the Buyer to the Real Property.

2.5 Leased Vehicles. If the Buyer desires to purchase any of the vehicles (the "Leased Vehicles") that the Seller leases as of or after the date hereof for use exclusively in the conduct of the Retail Business, the Buyer shall notify the Seller in writing which Leased Vehicles the Buyer wishes to purchase at least 20 days prior to the Closing Date. After receiving such notice, the Seller shall take the necessary steps to purchase the Leased Vehicles desired by the Buyer from their respective lessors pursuant to the purchase options contained in the leases for such Leased Vehicles; provided, that, the Seller shall not have any obligation to purchase any Leased Vehicle that the Seller does not lease as of the date the Seller receives the notice from the Buyer pursuant to this Section 2.5 and shall not have any obligation to purchase any Leased Vehicle that the Seller leases pursuant to a lease that does not contain a purchase option. After such purchase by the Seller, such Leased Vehicles shall be considered part of the Retail Assets and shall be conveyed to the Buyer as provided hereunder. In consideration of the purchase of the Leased Vehicles by the Seller for the benefit of the Buyer, the Buyer shall pay to the Seller on the Closing Date, in addition to all other amounts due to the Seller hereunder, the total amount of all costs and expenses, as provided by the Seller to the Buyer in writing prior to the Closing Date, of the Seller in purchasing the Leased Vehicles desired by the Buyer. Notwithstanding anything to the contrary contained herein or in any of the other Transaction Documents, the Buyer agrees that the representations and warranties contained in Article V hereof (except for those contained in Section 5.12 hereof) shall not apply to the Leased Vehicles included in the Retail Assets. Except for the representation and warranty contain in Section 5.12 hereof, **SELLER MAKES NO EXPRESS WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO ANY OF THE LEASED VEHICLES SOLD TO THE BUYER HEREUNDER AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, AT LAW OR IN EQUITY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH LEASED VEHICLES.**

ARTICLE III

PURCHASE PRICE AND EXPENSES

3.1 Purchase Price. In consideration of the transfer to the Buyer of the Retail Assets, on the Closing Date, the Buyer shall pay to the Seller the amount of Fifteen Million Five Hundred and Eighty Thousand Dollars (\$15,580,000) (the "Base Purchase Price"), subject to any reduction in the Base Purchase Price elected by the Seller pursuant to Section 7.5 or 7.6, and plus an amount (such amount being referred to herein as the "Receivables Amount") equal to the sum of all Accounts Receivable as of the Closing Date (as so adjusted, the "Final Purchase Price").

09-06-2012 11:11:11

09.06.12 City 000014

8 

5000092

reasonably be expected to impair materially, the Buyer's ability to perform its obligations under this Agreement; and

(b) The Seller will promptly, and in no event later than three Business Days after obtaining knowledge thereof, give oral and written notice to the Buyer of (i) any material default or breach by the Seller with respect to any of the Seller's representations and warranties in this Agreement or the due and timely performance of any of the Seller's covenants and agreements contained in this Agreement, (ii) any matter that has resulted in, or might reasonably be expected to result in, a Material Adverse Effect, or (iii) any other matter that has impaired materially, or might reasonably be expected to impair materially, the Seller's ability to perform its obligations under this Agreement.

7.11 Post-Closing Access to the Assets.

(a) The Buyer shall permit the Seller to have access to the Real Property for a reasonable period of time following the Closing for the purpose of allowing the Seller and the Joint System to remove any assets that do not constitute the Retail Assets.

(b) The Seller shall be permitted to maintain its telecommunications equipment on the Owens Corning Fiberglass Tank located on Starr Highway in Anderson, South Carolina, for a period of one year after the Closing Date, at no cost to the Seller, and shall be permitted reasonable access to such telecommunications equipment. The Seller shall have the right to remove its telecommunications equipment from the Owens Corning Fiberglass Tank at any time during such one-year period. After the expiration of such one-year period, any telecommunications equipment not removed shall become the property of the owner of such tanks. The Seller agrees to (a) repair any damage to any property of the Buyer resulting from the Seller's operation, maintenance, repair, replacement or removal of such equipment, and (b) to indemnify and hold the Buyer harmless from any loss or liability for any damage to, or destruction of, property or any injury, death or other loss to persons resulting directly or indirectly from the acts or omissions of any officer, employee, agent, contractor or any other person acting on behalf of the Seller in connection with the Seller's operation, maintenance, repair, replacement or removal of such equipment.

7.12 Allocation of Purchase Price. The Seller and the Buyer shall use commercially reasonable efforts to agree on an allocation of the Final Purchase Price among the Retail Assets (with the remainder of the Final Purchase Price being allocated to goodwill). The Seller and the Buyer agree that they shall report the transactions contemplated by this Agreement for income tax purposes in accordance with the agreed upon allocation of the Final Purchase Price, pursuant to Section 1060 of the Code and the regulations thereunder, and agree not to take, in any filing with or accompanying any Tax Return reporting any part of the transaction undertaken herein, a position inconsistent with such allocations; provided, however, that if the Seller and the Buyer are unable to reach an agreement with respect to the allocation of the Final Purchase Price, each party may allocate the Final Purchase Price among the Retail Assets as it deems appropriate.

7.13 Assumption of Contracts. The Buyer shall use commercially reasonable efforts to cause each of the Seller's industrial customers that is a party to a water purchase agreement with the Seller to terminate its water purchase agreement effective on the Closing Date and to enter

into a replacement purchase agreement directly with the Buyer. In addition, the Seller and the Buyer shall cooperate to obtain the release of the Seller with respect to all contracts to be assigned to the Buyer, and the assignment and assumption agreement to be entered into and delivered by the parties at the Closing shall provide that the Buyer (i) shall fully perform the Seller's obligations under the assigned contracts and (ii) shall, if a release of the Seller is not obtained, indemnify the Seller, to the extent permitted by law, for any breach by the Buyer of any such contracts.

7.14 Sale of Taps. The Buyer agrees that it will sell to the Joint System or its designees at the Closing or within 10 days thereafter all of the taps listed on Exhibit G at a price of \$700.00 per tap.

7.15 Operating Agreement. At the Closing, the Buyer agrees to enter into an operating agreement with the Joint System in the form attached hereto as Exhibit H.

ARTICLE VIII

CLOSING CONDITIONS

8.1 Mutual Conditions. The respective obligations of each of the parties to this Agreement to effect the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) Neither the Seller nor the Buyer shall be subject on the Closing Date to any order, decree or injunction of a court of competent jurisdiction that enjoins or prohibits the consummation of this Agreement and no Governmental Authority shall have instituted a suit or proceeding that is then pending that seeks to enjoin or prohibit the transactions contemplated hereby. If the Seller or the Buyer is subject to any such order, decree or injunction or the subject of any such suit or proceeding, then such Person shall take any steps within such Person's control to cause any such order, decree or injunction to be modified so as to permit the Closing and to cause any such suit or proceeding to be dismissed.

(b) No federal, state, local or foreign, if any, law, statute, regulation, code, ordinance or decree shall have been adopted or promulgated; and no temporary restraining order, preliminary or permanent injunction or other order issued by a court or other Governmental Authority of competent jurisdiction shall be in effect, having the effect of making the transactions contemplated herein illegal or otherwise prohibiting consummation of the transactions contemplated herein; provided, however, that the provisions of this Section 8.1(b) shall not relieve the Seller or the Buyer of its obligations to effect the transactions contemplated by this Agreement if such party's or parties' failure to fulfill its obligations pursuant to Section 7.7 shall have been the cause of, or shall have resulted in, such order or injunction.

(c) All approvals required for the transactions contemplated herein from Utilities Commissions and Health Agencies shall have been obtained.

C:\2012-09_0217 01:02

24 

09.06.12 City 000030

5000108

EXHIBIT A
RETAIL ASSETS

The Retail Assets consist of the following:

(a) All water mains and pipes used in the Seller's water system in Anderson County, South Carolina that are (i) owned by the Seller or in which the Seller has an ownership interest and (ii) located within the area described on Schedule 1 attached hereto, but excluding the water mains and pipes described on Schedule 2 attached hereto (the water mains and pipes that are included in the Retail Assets are referred to herein as the "Retail Mains and Pipes");

(b) All recorded and unrecorded water distribution and water transmission easements, rights of way and rights of encroachment to the extent the same contain (but only to the extent the same contain) Retail Mains and Pipes and are: (i) owned by the Seller or in which the Seller has an ownership interest; (ii) located within the area described on Schedule 1 attached hereto; and (iii) used by the Seller in connection with the Retail Mains and Pipes;

(c) All fire hydrants, meters and valves that are (i) owned by the Seller or in which the Seller has an ownership interest and (ii) connected to and served by the Retail Mains and Pipes;

(d) The fixed assets listed on Schedule 3 attached hereto;

(e) The Real Property (including the improvements thereon) listed on Schedule 4 attached hereto;

(f) All of the Seller's rights under all Contracts relating exclusively to the Retail System, including those Contracts listed on Schedule 5 attached hereto, other than any rights arising as a result of the breach of any such Contracts prior to the Closing Date and other than any Excluded Contracts;

(g) All of the Seller's books, files, records, documents, data, plans, proposals and all other recorded knowledge, whether in written, electronic, visual or other form, related exclusively to the Retail Business; and

(h) All Accounts Receivable.

The Retail Assets shall not include any other assets including (i) any water main or pipe associated with the Duke Water System to the extent the same is located outside of the geographic area described on Schedule 1 attached hereto; (ii) any land, building or structure, water storage tank or facility or associated pumping and related equipment not otherwise included above in the Retail Assets, including the Duke Water System water treatment plant and related assets; and (iii) any easement, right of way or other right appurtenant to or otherwise associated with any of the assets described in (i) and (ii) in this sentence.

C:\746238\04_03227.01092

09.06.12 City 000042



5000120

Schedule 1
to
Exhibit A

Description and Geographic Area of Retail Mains and Pipes

The retail mains and pipes are located within the retail service area shown in gray on the attached map and as described below:

Service Area Boundary Description: Beginning where U.S. Highway 76 & S.C. Highway 28 crosses Lake Hartwell, thence eastwardly approximately four tenths of a mile along the Six and Twenty Arm of Lake Hartwell to the eastern property line of Middleton Shores S/D, thence southwardly along said property line to Old Mill Road, thence southeastwardly along Old Mill Road and extending one lot deep on the southern side of Old Mill Road until its intersection with U.S. 178, crossing Brown Road and continuing to Fritz Drive, thence northeastwardly along Fritz Drive approximately three tenths of a mile, then due east approximately three tenths of a mile to a ditch, thence northwardly along said ditch approximately three tenths of a mile to a tributary of Town Creek, thence southeastwardly along said tributary approximately four tenths of a mile to a point being common with the Anderson City Limits, thence northeastwardly approximately four tenths of a mile to the intersection of Kings Road and Hobson Road, thence southeastwardly along Hobson Road approximately six tenths of a mile to the property line of Peppertree S/D, thence southwestwardly, southeastwardly, and northeastwardly, all along the boundary of Peppertree S/D and back to Hobson Road, thence continuing southeastwardly along Hobson Road approximately two tenths of a mile to Concord Road, thence northeastwardly along Concord Road to Edgebrook Drive, thence southeastwardly along Edgebrook Drive approximately seven tenths of a mile, thence due south approximately four tenths of a mile to the curve in Cardinal Circle, thence along Cardinal Circle to the property line of Marcdon Place S/D, thence along the property line boundaries of Marcdon Place S/D in westerly, northwesterly, southwesterly and southeasterly directions to the western most property line of Cardinal Park, and thence along western most Cardinal Park property line to Reed Road, thence eastwardly along Reed Road to S.C. Highway 81, thence southwardly along S.C. Highway 81 approximately one fourth of a mile to Simpson Road, thence along the property line boundary of the Bi-Lo Shopping Center in southwesterly, southeasterly and northeasterly directions back to Simpson Road approximately two tenths of a mile from S.C. Highway 81, thence southeastwardly along Simpson Road to Calhoun Street Extension, thence southwestwardly along Calhoun Street Extension approximately four tenths of a mile to a branch of Bailey Creek, thence southeastwardly along the branch through Rankins Lake to Bailey Creek, thence southwesterly along Bailey Creek to Rogers Road, thence eastwardly along Rogers Road to Old Williamston Road, thence southwestwardly along Old Williamston Road approximately three tenths of a mile to Highland Acres S/D, thence approximately one mile along the western property line of Highland Acres S/D crossing Rocky River (*ending common boundary with Hammond and beginning with Broadway*) and along the northeastern property line of Cedar Ridge S/D to U.S. Highway 29, thence northeastwardly along U.S. Highway 29 to Plantation Road, thence southwardly along Plantation Road to Bellhaven Road, thence eastwardly along

C-746238-04_03227 01/092

09.06.12 City 000043

5000121

Bellhaven Road to Cypress Lane, thence southwardly along Cypress Lane to Bolt Drive, thence northwestwardly along Bolt Drive back to Plantation Road and including Forest Hill Chapel, thence southwardly along Plantation Road to Sansbury Drive, thence northwestwardly along Sansbury Drive to Fairfield Drive, thence southwestwardly along Fairfield Drive to U.S. Highway 76 & 178, thence northwestwardly approximately three tenths of a mile along U.S. Highway 76 & 178 to the southernmost property boundary of Anderson Garden Apartments (*ending common boundary with Broadway and beginning with Homeland Park*), thence southwestwardly along said property line to Rocky River, thence northwestwardly along Rocky River to a branch stream located behind New Silverbrook Cemetery, thence southwestwardly approximately six tenths of a mile along said branch to White Street Extension, thence northwestwardly along White Street Extension to Shockley Ferry Road, thence northeastwardly along Shockley Ferry Road approximately four tenths of a mile to Cemetery Road, thence northwestwardly along Cemetery Road approximately one tenth of a mile to the Piedmont Northern Railroad rights-of-way, thence southwestwardly along said railroad rights-of-way approximately eight tenths of a mile to S. McDuffie Street, thence northwestwardly along S. McDuffie Street to Pecan Drive, thence along Pecan Drive to S. Main Street, thence southwardly approximately three and six tenths miles along S. Main Street, Hunt Street, Hillman Drive, and then cross country to and including all of the Wellington Mill property and to and including all of the Owens Corning Fiber Plant property and then back to Major Road, thence northwestwardly along Major Road approximately one tenth of a mile to the intersection of S.C. Highway 28 Bypass and S. Murray Avenue, thence northwestwardly along S.C. Highway 28 Bypass to Sayre Street, thence southwestwardly approximately two and one half miles along Sayre Street and U.S. Highway 29 down to and including the BASF Plant property and Michelin Plant property and then back to U.S. Highway 28 Bypass, thence northwestwardly approximately six tenths of a mile to Generostee Creek, thence southwestwardly approximately eight tenths of a mile to a branch of Generostee Creek (*ending common boundary with Homeland Park and beginning with West Anderson*), thence northwestwardly along said branch to Monitor Drive, thence westwardly along Monitor Drive to Y'all Road, thence northwestwardly along Y'all Road to Dobbins Bridge Road, thence in a northeasterly direction along Dobbins Road on the southeastern side of Dobbins Bridge Road to the western most entrance of Greenbrier Subdivision thence in a westerly direction along the northside of Dobbins Bridge Road to Michelin Blvd., thence northeastwardly along Michelin Boulevard to Three Mile Creek, thence northeastwardly along Three Mile Creek to S.C. Highway 24, thence westwardly along S.C. Highway 24 to Warner Road, thence northwardly along Warner Road to Standridge Road, thence westwardly along Standridge Road to Fretwell S/D, thence northwestwardly, southwestwardly and southeastwardly, all along the boundaries of said S/D back to Standridge Road, thence westwardly along Standridge Road to New Prospect Church Road, thence northwestwardly approximately three tenths of a mile to Five Mile Creek, thence northeastwardly along Five Mile Creek to Centerville Road, thence northwestwardly along Centerville Road crossing Whitehall Road to Gerrard Road, thence northerly along Gerrard Road to Dixon Road, thence northwestwardly along Dixon Road to Dunn Road, thence northerly along Dunn Road to Old Pearman Dairy Road and the Southern Railroad tracks and rights-of way, thence northerly along the Southern Railroad rights-of-way to Lake Hartwell, and thence northeastwardly along the Six and Twenty Arm of Lake Hartwell

C:\746238\04_03227.D1092

09.06.12 City 000044

5000122

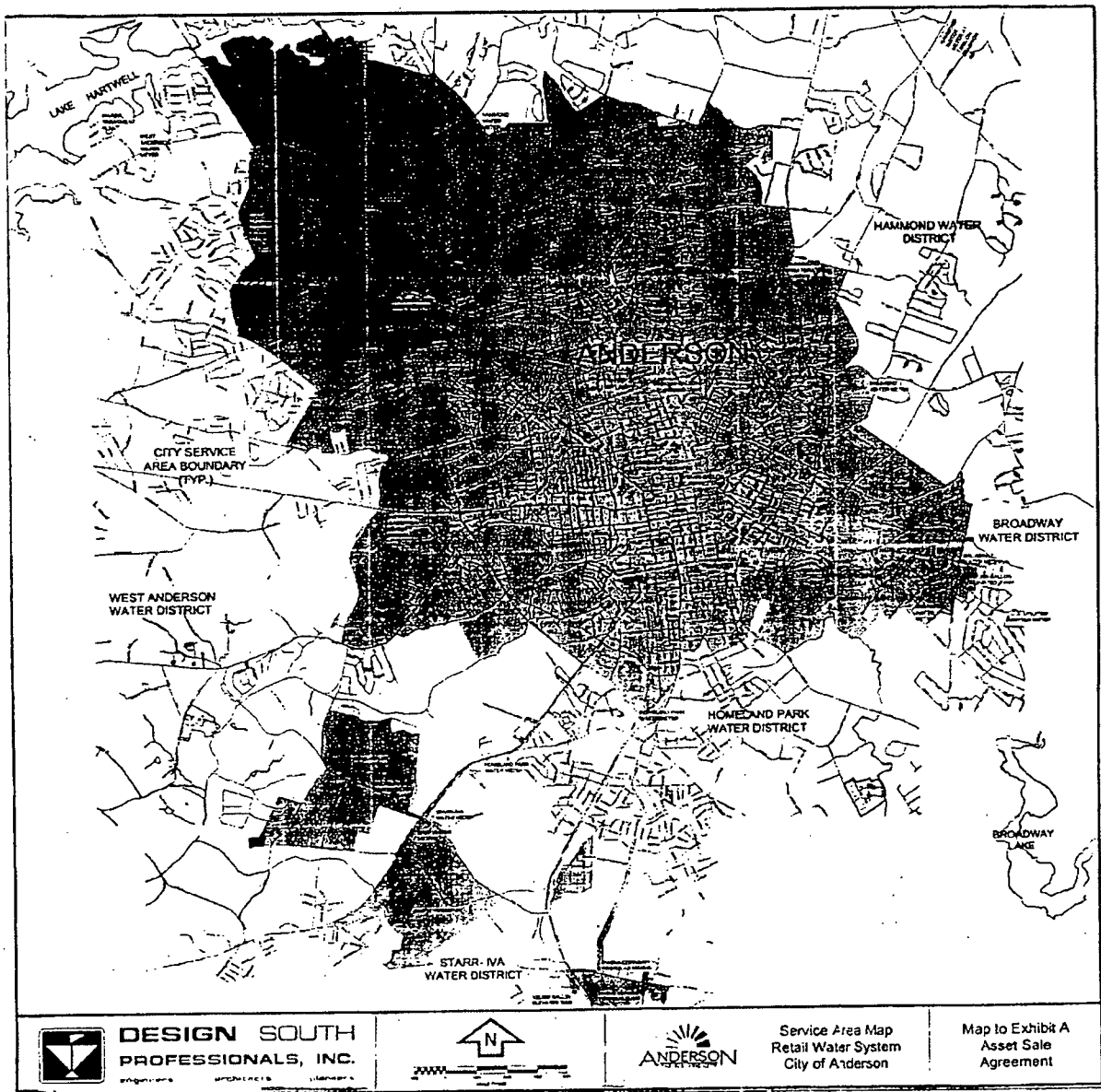
back to where U.S. Highway 76 & S.C. Highway 28 crosses Lake Hartwell.

Because the map attached hereto which depicts the retail service area of the City of Anderson may not be drawn to scale, in the event of a discrepancy between such map and the description provided above, such description shall control the actual retail service area boundary.

C:\746238\04_03\27 01092

09.06.12 City 000045

5000123



Schedule 2
to
Exhibit A

Excluded Mains and Pipes

The following mains are excluded from the conveyance to the Buyer:

- (a) 30" line from the Water Filtration Plant (located at 998 Hunters Trail, Anderson, South Carolina) to S.C. 28 Bypass along Old Pearman Dairy Road, Dixon Road and Whitehall Road.
- (b) 24" line from the Water Filtration Plant to the vicinity of Lake Hartwell and Clemson Boulevard along Old Pearman Dairy Road, S.C. 28 Bypass and Clemson Boulevard.
- (c) 16" line along S.C. 28 Bypass from the 30" line on Whitehall Road to the 24" line on Old Pearman Dairy Road.

C-746235-04_03227.01292

09.06.12 City 000046

5000124

Schedule 5
to
Exhibit A

Certain Contracts and Arrangements

Water Service Agreements

1. Memorandum of Agreement, dated April 4, 1967, by and between Duke Power Company and Dow Badische Company.
2. Water Service Agreement, dated April 1, 1990, by and between Duke Power Company and Owens-Corning Fiberglas Corporation.
3. Water Service Agreement, dated April 7, 1995, by and between Duke Power Company and Plastic Omnium Industries, Inc.
4. Memorandum of Agreement, dated December 12, 1977, by and between Duke Power Company and Stuafter Chemical Company.
5. Agreement, dated August 10, 1987, by and between Duke Power Company and Culp Woven Velvets, Inc.
6. Water Service Agreement, dated July 3, 2000, by and between Duke Water Systems and Michelin North America, Inc.

Other Contracts and Agreements

1. All outstanding commitments made to extend service exclusively related to the Retail Business and all existing and unexpired refund agreements exclusively related to the Retail Business entered into pursuant to the Duke Power Company Water Department Service Regulations, dated July 10, 1990, filed with the South Carolina Public Service Commission.
2. Fire Protection Water Service Agreement, dated January 27, 1989, by Duke Power Company and Anderson Tie Station.²

² The rights and obligation of Anderson Tie Station are to remain with the Seller.

C:\746236\04_03227.01092

09.06.12 City 000049

5000127

EXHIBIT C

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated this 17th day of April, 2002, is by and between DUKE ENERGY CORPORATION, a North Carolina corporation (the "Seller"), THE CITY OF ANDERSON, an incorporated city in the State of South Carolina (the "Buyer"), and MICHELIN NORTH AMERICA, INC. (the "Customer").

BACKGROUND STATEMENT

The Seller has agreed to sell to the Buyer certain assets of the Seller's water system located in Anderson County, South Carolina (the "Retail Assets") pursuant to the terms of that certain Asset Sale Agreement, dated February 20, 2002, between them (the "Sale Agreement"). In connection therewith, the Seller has agreed to assign to the Buyer, and the Buyer has agreed to assume, effective as of the closing date of the sale of the Retail Assets to the Buyer (the "Closing Date"), the Water Service Agreement between the Seller and the Customer, dated July 3, 2000, a copy of which is attached hereto as Exhibit A (as amended and in effect on the date hereof, the "Assigned Contract").

This Agreement sets forth the terms and conditions of the assignment of the Assigned Contract to the Buyer.

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Sale Agreement.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual agreements and representations set forth below, the parties hereto agree as follows:

1. Assignment. Pursuant to the terms of the Sale Agreement, the Seller hereby assigns to the Buyer, effective as of the Closing Date, all of the Seller's right, title and interest in and to the Assigned Contract, except for any rights arising as a result of a breach of the Assigned Contract prior to the Closing Date.
2. Assumption by the Buyer. The Buyer hereby assumes, effective as of the Closing Date, all liabilities and obligations of the Seller from and after the Closing Date under the Assigned Contract.
3. Consent to Assignment. The Customer hereby consents to the foregoing assignment by the Seller of the Assigned Contract and to the foregoing assumption by the Buyer of the Assigned Contract.

4. Liability of Seller. The Seller shall remain liable to the Customer for any breach of the Assigned Contract by the Seller based on any actions or omissions occurring prior to the Closing Date. The Customer shall look solely to the Buyer for the performance of all obligations under the Assigned Contract from and after the Closing Date, and the Customer hereby releases the Seller from any and all liabilities and obligations under the Assigned Contract based on any action or omissions occurring on or after the Closing Date.

5. Effectiveness of Consent. The assignment and assumption of the Assigned Contract contemplated hereby shall be effective only upon the consummation of the sale of the Retail Assets contemplated by the Sale Agreement. If the Sale Agreement is terminated for any reason, this Agreement shall be null and void and shall have no further force or effect.

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one instrument.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement in multiple counterparts upon the dates indicated below by their duly authorized representatives.

SELLER:**DUKE ENERGY CORPORATION**

By: Stephen G. DeMay
Name: Stephen G. DeMay
Title: Vice President
Date: April 17, 2002

BUYER:**THE CITY OF ANDERSON**

By: [Signature]
Name: John R. Moore
Title: City Manager
Date: April 17, 2002

CUSTOMER:**MICHELIN NORTH AMERICA, INC.**

By: _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the undersigned have executed this Agreement in multiple counterparts upon the dates indicated below by their duly authorized representatives.

SELLER:

DUKE ENERGY CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

BUYER:

THE CITY OF ANDERSON

By: _____
Name: _____
Title: _____
Date: _____

CUSTOMER:

MICHELIN NORTH AMERICA, INC.

By: *M. J. Wardle*
Name: Martin J. Wardle
Title: Vice President, Purchasing
Date: APRIL 12, 2007

EXHIBIT A

Assigned Contract

See attached.

WATER SERVICE AGREEMENT

This Agreement is made and entered into as of the 3rd day of July, 2000, by and between DUKE WATER SYSTEMS, a Division of Duke Energy Corporation, a corporation organized and existing under the laws of the State of South Carolina (hereinafter designated as "DWS") and MICHELIN NORTH AMERICA, INC., One Parkway South, Greenville, South Carolina (hereinafter designated as "MNA").

WITNESSETH

That in consideration of the covenants and agreements hereinafter contained and other valuable considerations, the parties hereto, for themselves, their successors and assigns, mutually agree as follows:

1. Terms. DWS will deliver water to MNA, which MNA will use and pay for, subject to the terms and conditions of this Agreement. The original term of this Agreement shall be Ten Years from the delivery date or October 1, 2000, whichever is earlier, and shall be renewable at the expiration of the original term. Either of the parties hereto may terminate this Agreement at any time during the term hereof by giving at least three (3) years written notice of such termination to the other party. Nonetheless, either party may terminate this Agreement for cause or for material breach upon sixty (60) days' written notice to the other party. The sale, delivery and use of water hereunder and all service to be rendered or performed by DWS in connection therewith, shall be subject to and in accordance with the terms and conditions of DWS's Service Regulations on file with the South Carolina Public Service Commission (hereinafter referred to as the "Commission"). The Service Regulations are incorporated by reference and made a part hereof as though fully set forth herein. Said Service Regulations are subject to change, revision, alteration, or substitution, either in whole or in part, upon order of the Commission or any other regulatory authority having jurisdiction, and any such change, revision, alteration or substitution shall immediately be made a part hereof as though fully written herein, and shall nullify any prior provision in conflict herewith. DWS reserves the right and MNA hereby grants DWS the right after ninety (90) days notice to suspend the furnishing of any water hereunder or to terminate this Agreement for breach of any of DWS's Water Service Regulations; provided however, that, where an emergency exists, or where a dangerous condition is found to exist on MNA's premises, the water may be shut off without such notice. Upon the termination or expiration of this Agreement, it is expressly agreed and understood that DWS shall have the right, upon reasonable notice to MNA, to enter upon the premises of MNA at such place or places in which any meter or other property of DWS is located and to remove the same.

2. Services. (a) The water to be delivered hereunder shall be supplied from DWS's waterworks system in Anderson County, South Carolina, and shall be delivered, except as hereinafter provided for, twenty-four (24) hours a day, three hundred sixty-five (365) days per year. Said water shall be provided to MNA at a

5000289

delivery point suitable to serve MNA's property located in the State of South Carolina, County of Anderson described as follows:

At a point on MNA's property just west of a county road (Michelin Boulevard), approximately 2,200 feet north of its intersection with U. S. Rte. 29 South.

- (b) The meter(s) used to measure and record the amount of water delivered, will be provided by DWS and at the cost of MNA. Such meter(s) shall be located at the above described delivery point(s) and shall remain the property of DWS. DWS shall test such meter(s) at times and intervals specified in its Service Regulations to establish their accuracy.
- (c) Satisfactory pits or housing shall be provided by MNA for said meter(s) and associated piping and accessories. MNA agrees to furnish land and/or rights of way for said meter pit(s), apparatus and appliances, at no charge to DWS, and, if for any reason it becomes necessary to relocate said meter pit, apparatus and appliances, all costs of relocation will be paid by MNA.
- (d) Appropriate backflow prevention equipment is required on the MNA side of the meter in its service line. MNA shall be responsible for all costs associated with installing the proper backflow preventers at the metering station, including any pit(s), required valves and accessories. All responsibility for ongoing maintenance and operation of the backflow preventers and their respective pit(s) is MNA's. MNA agrees to test the backflow preventers after installation and annually thereafter. The testing and any required maintenance shall be performed by a technician certified by the South Carolina Department of Health and Environmental Control (hereinafter referred to as SCDHEC).
- (e) The total installation of the meter and backflow preventers, and pit(s) to house them shall be in accordance with all applicable regulations promulgated by SCDHEC.

3. Delivery.

- (a) DWS will begin to deliver water hereunder or be able to do so, at such date on or before October 1, 2000, as may be mutually agreed upon by the parties hereto, and MNA will be ready to receive and use water on said date.
- (b) Sale, delivery and use of water hereunder shall be subject to and in accordance with the terms and conditions of DWS's Water Rate Schedule No. 7, now on file with the Commission and hereby incorporated by reference and made a part hereof as though fully set forth herein. Said Rate Schedule is subject to change, revision, alteration or substitution, either in whole or in part upon approval of the Commission or any other regulatory authority having jurisdiction, and any such change, revision, alteration or substitution shall immediately be made a part hereof as though fully written herein and shall nullify any prior provision of this Agreement in conflict herewith.

(c) MNA agrees to purchase its water needs from DWS. MNA agrees to pay all reasonable costs associated with the installation of new facilities required to bring water service from DWS's existing water system to a point or points on MNA's property, said point or points being delineated by MNA. All new facilities installed between DWS's existing water system and the metered delivery point to MNA, including the meter(s) and excluding the pit or housing, shall be titled to DWS by MNA.

(d) The maximum amount of water allowed for MNA's use through this metered delivery will be 2 CCF (1,500 gallons) per minute.

4. Force Majeure. "Force Majeure" means any cause beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure. It shall include, without limitation, sabotage, strikes or other labor difficulties, riots or civil disturbances, acts of God, hurricanes, earthquakes, explosions, lightning, landslides, fires, floods, droughts, low water, or similarly cataclysmic occurrences, accidents, acts of Government or binding orders of any court or agency, inability to obtain necessary equipment or material, equipment breakdowns, modification or maintenance work on DWS's water system, or any other cause beyond the Party's control, then and in such event the Party claiming Force Majeure shall not be liable during such period of prevention. The Party claiming Force Majeure shall use all reasonable efforts within its control to remove and overcome such cause or causes.

5. Suspension of Service During Emergency. DWS reserves the right and MNA hereby grants to DWS the right to suspend the furnishing of any water hereunder during any system-wide emergency. Such emergency will be declared by DWS to MNA. The system-wide emergency may be declared in DWS' sole discretion and DWS may assign, in its sole discretion, priorities for water usage during such a declared emergency.

6. Payment. Bills rendered to MNA under this Agreement are due and payable at the office of DWS on the issuance date of the bill. Bills are past due and delinquent on the fifteenth day after the date of the bill. In addition, all bills not paid by the twenty-fifth day after the billing date shall be subject to a late charge per month on the unpaid amount at the rate specified in Water Rate Schedule No. 7. If the bill has not been paid after the twenty-fifth day from the billing date, then DWS may, at its option and in addition to any other available rights or remedies, suspend the delivery of water hereunder until MNA has made payment of all money due. This option may be exercised by DWS as often as any such default shall occur, and delay or omission on the part of DWS to exercise such option shall not be deemed a waiver of its right to exercise such option whenever such default on the part of MNA shall occur.

7. Set Offs and Counterclaims. No claims or demands which MNA may

have against DWS shall be set off or counterclaimed against the payment of any sum of money due hereunder, and all such sums shall be paid as herein provided, regardless of any such claim or demand.

8. Condition. The obligations of DWS hereunder are conditioned upon its securing and retaining all necessary rights-of-way, franchises, and permits for the delivery of such water. DWS shall not be liable to MNA for any failure to deliver water resulting from its failure to secure and retain such rights-of-way, franchises, or permits.

9. Warranty. (a) DWS represents that it owns the infrastructure to deliver water service and warrants that it will provide water service to MNA's property located at a point in the southwestern quadrant of the intersection of U. S. Route 29 South and Lee Dobbins Road (S-4-65), Tract 8, upon MNA's request and according to MNA's criteria stipulated in this Agreement. DWS warrants to use all reasonable means at its disposal to ensure the uninterrupted supply of water to MNA.

(b) MNA AGREES THAT IF THE WATER DELIVERED HEREUNDER IS USED FOR FIRE PROTECTION PURPOSES, SUCH USE SHALL BE AT MNA'S RISK AND MNA FURTHER AGREES THAT DWS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE BY FIRE EVEN IF SUCH LOSS OR DAMAGE IS OCCASIONED FROM THE FAILURE OF DWS TO SUPPLY WATER HEREUNDER.

(c) LIMITED WARRANTY: DWS WARRANTS THAT THE SERVICES PROVIDED HEREUNDER, WITHIN THE LIMITS PRESCRIBED BY THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION, SHALL BE PROVIDED WITH PROFESSIONAL THOROUGHNESS AND COMPETENCE AND IN ACCORDANCE WITH GENERALLY AND CURRENTLY ACCEPTED GOOD PRINCIPLES AND PRACTICES. DWS SHALL, AT NO COST TO MNA, PROMPTLY CORRECT ANY SERVICES WHICH HAVE FAILED SAID WARRANTY. NO OTHER WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE, IS INCLUDED IN THIS AGREEMENT.

10. Limitation of Liabilities. DWS's TOTAL CUMULATIVE LIABILITY TO MNA FOR CLAIMS OF ANY KIND WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RELATED TO THIS AGREEMENT, SHALL IN NO CASE EXCEED THE COMPENSATION PAID TO DWS UNDER THIS AGREEMENT FOR THE HIGHEST TWELVE CONSECUTIVE MONTHS' BILLS. IN NO EVENT SHALL DWS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES AS A RESULT OF BREACH OF CONTRACT, WARRANTY, GUARANTEE, INDEMNITY, OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY.

5000292

11. Survival of Termination. THE PROVISIONS OF SECTIONS 9 AND 10 SHALL APPLY NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT AND SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT.

12. Assignment. This Agreement and its terms, conditions, obligations and liabilities shall be binding upon the parties hereto and their successors and assigns; provided, however, MNA may not assign this Agreement or otherwise transfer its rights or obligations hereunder without DWS's prior written consent. Duke Energy Corporation is currently entertaining bids for its water systems. In the event that Duke Energy Corporation sells its water systems, MNA hereby agrees to the assignment of this Agreement to DWS's successor.

13. Choice of Law and Jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina, excluding its choice of law rules. Any dispute arising out of or related to this Agreement shall be litigated in a court of the State of South Carolina. Each party expressly submits to the jurisdiction of the Courts of the State of South Carolina.

14. Integration. This Agreement is a complete contract and contains the entire agreement between the parties relating to the subject matter hereof. All prior communications, understandings, or representations, whether written or oral, are hereby superseded. No modification, amendment or other change in this Agreement shall be effective for any purpose unless specifically set forth in writing signed by the party to be bound thereby.

15. Headings. Section headings are for the convenience of reference only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

MICHELIN NORTH AMERICA, INC.

BY: Martin G. Wardle
Martin Wardle
Vice President of Purchasing

DUKE WATER SYSTEMS

BY: Michael Snow
Michael Snow
Manager, Duke Water Systems

EXHIBIT D

WATER SALE AND PURCHASE AGREEMENT

among the

ANDERSON COUNTY JOINT MUNICIPAL WATER SYSTEM

and

The Municipalities of Anderson, Clemson, Pendleton and Williamston

and the Special Purpose Districts of

**The Big Creek Water and Sewerage District of Anderson County,
The Broadway Water and Sewerage District of Anderson County,
Hammond Water District, Homeland Park Water District,
Powdersville Water District, Sandy Springs Water District,
Starr-Iva Water and Sewer District, and West Anderson Water District**

Dated as of March 21, 2002

08.25.12 City 000003

5000217

This **WATER SALE AND PURCHASE AGREEMENT** made as of this 21st day of March, 2002, by and among the **ANDERSON COUNTY JOINT MUNICIPAL WATER SYSTEM**, South Carolina, a joint municipal water system (hereinafter referred to as "Seller"), and the municipalities of Anderson, Clemson, Pendleton and Williamston and the special purpose districts of The Big Creek Water and Sewerage District of Anderson County, The Broadway Water and Sewerage District of Anderson County, Hammond Water District, Homeland Park Water District, Powdersville Water District, Sandy Springs Water District, Starr-Iva Water and Sewer District, and West Anderson Water District (hereinafter referred to as the "Purchasers").

BACKGROUND AND FINDINGS

Seller was organized under the provisions of Section 6-25-5 et seq., Code of Laws of South Carolina (1976), as amended, as a body politic and corporate for the purpose of planning, financing, developing, constructing, acquiring, improving, enlarging, selling, leasing, maintaining and operating water facilities within the service areas of its respective members. In furtherance of such purposes, Seller has determined to acquire the Duke Energy Water Filtration Plant situated on Lake Hartwell, certain transmission mains which transport treated water from this Plant to various areas in Anderson County and a small area in Pickens County and related facilities (the "Duke Facilities"). The Duke Facilities, together with certain water transmission facilities that the City of Anderson is purchasing from Duke Energy Corporation ("Duke Energy"), have been the potable water source for and have provided water, on a wholesale basis, to each of the municipalities of Clemson, Pendleton, and Williamston, South Carolina and to the public service districts of The Big Creek Water and Sewerage District of Anderson County, The Broadway Water and Sewerage District of Anderson County, Hammond Water District, Homeland Park Water District, Powdersville Water District,

08.25.12 City 000006

5000220

Sandy Springs Water District, Starr-Iva Water and Sewer District, and West Anderson Water District. In addition, Duke Energy has also, on a retail basis, provided potable water within and without the corporate limits of the City of Anderson, to Clemson University and to certain other commercial, industrial and residential customers.

Seller has negotiated an agreement with Duke Energy whereby it will acquire the Duke Facilities and the City of Anderson has negotiated an agreement with Duke Energy whereby it will acquire certain transmission mains, storage tanks and related facilities. In order to insure its ability to serve certain of the Purchasers with potable water in accordance with the requirements of this Agreement, Seller entered into an Operating Agreement on February 25, 2002 (the "Operating Agreement") with the City of Anderson for the provision of the operation of certain transmission mains and related facilities which are being acquired by the City of Anderson. In order to serve Clemson University, Seller will enter into a separate agreement with Clemson University which will purchase water on a wholesale basis from Seller. Simultaneously with the transfer of the Duke Facilities to the Seller, the City of Anderson is acquiring the afore-mentioned transmission facilities from Duke Energy and the special purpose districts of The Broadway Water and Sewerage District of Anderson County and West Anderson Water District are acquiring certain facilities from Duke Energy.

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such

consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

The purpose of this acquisition is to assure that the provision of water to the service area will be under local control; that the water rates will be reasonable to local users; that an adequate water supply will be available for future growth in Anderson County; and that the associated local distribution systems may have an opportunity to make recommendations for future policies and operations. Seller, in order to acquire the Duke Facilities from Duke Energy, must obtain financing for the costs of the acquisition, related advances, and costs of issuance by the issuance of long term revenue bonds, secured by the revenues of Seller's water system and by water purchase agreements from its primary users.

Each of the Purchasers has determined that it is in the best interests of its customers and residents located within its respective service area to participate in the acquisition by Seller of the Duke Facilities by becoming a member of Seller and to purchase certain rights to the use of the Duke Facilities. By joining together, economies of scale can be achieved and each Purchaser will be able to acquire a safe and secure source of potable water. Each Purchaser, recognizing the benefits to be gained by such joint action, has determined, pursuant to the provisions of this agreement, to purchase the right to receive a specified allocated capacity defined in terms of millions of gallons of potable water per day and to pay for such amount of potable water by assuming the responsibility for a corresponding amount of the debt service on bonds issued by Seller to defray the acquisition of the Duke Facilities. As a means of providing sufficient security to the holders of such bonds all

The place for mediation or arbitration shall be Anderson, South Carolina, unless the parties agree otherwise. Any judgment upon the award may be entered in any court having jurisdiction. To the extent the parties agree, the decision of the arbitrator shall be final and binding upon the parties.

(B) Arbitration shall not be considered the sole or exclusive means of settling controversies which may arise under the terms and provisions of this Agreement, nor shall arbitration be considered a condition precedent to any action in a court of law or equity or proceedings before any governmental agency or regulatory body having jurisdiction thereof.

(End of Article V)

ARTICLE VI

MISCELLANEOUS

Section 6.01. Ownership of Facilities. The System shall at all times be the sole and absolute property of Seller.

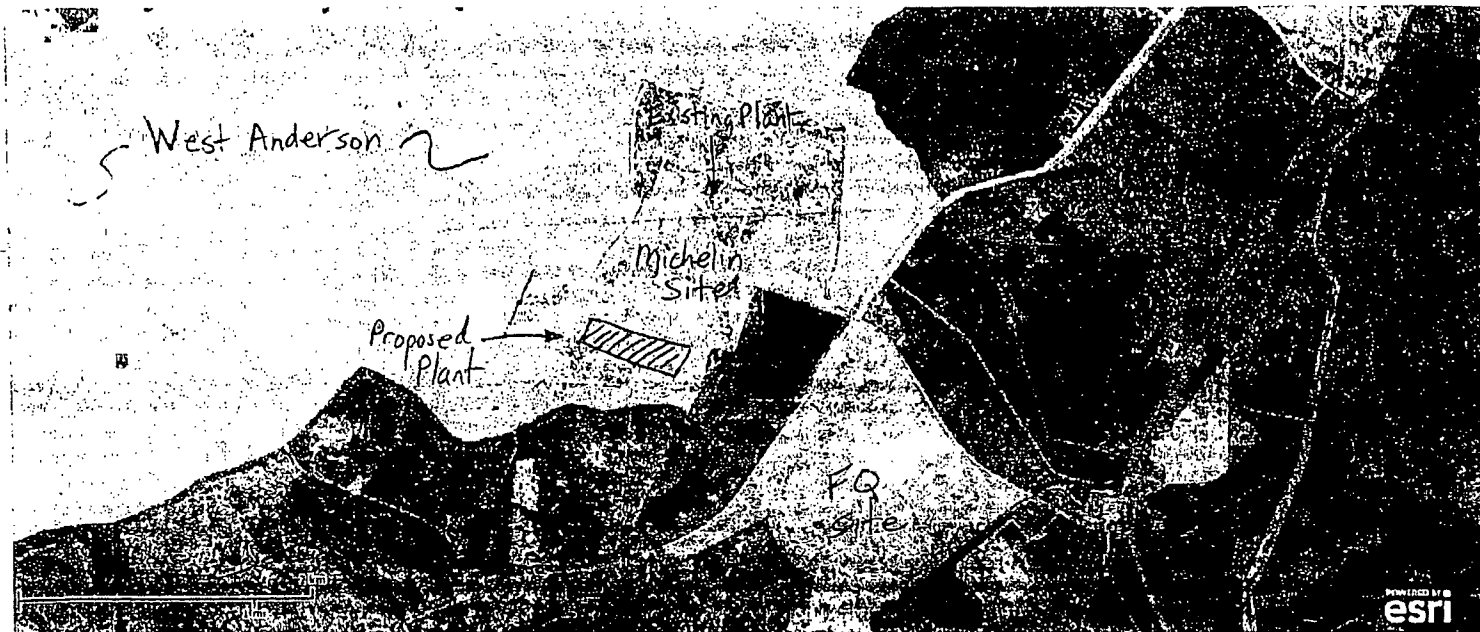
Section 6.02. Territorial Boundaries. In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes, the parties have agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve. The Territorial Map is attached hereto as Exhibit D.

Section 6.03. Construction and Operation of Trans-Lines.

Nothing herein shall prohibit any party from constructing new Trans-Lines, or maintaining existing Trans-Lines, through another's territory to serve customers in its own territory. Consent to use the streets and public ways for rights of way purposes for wholesale lines and for Trans-Lines is expressly given one to the other, subject to the appropriate proceedings being adopted by the party providing the consent and compliance with engineering and traffic safety standards. The owner of

EXHIBIT E

My Map



City of Anderson, SC Fri Oct 19 2012 00:43:29 AM

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	C.A. No. 2012-CP-04-02770
West Anderson Water District.	)	
	)	
Plaintiff.	)	
	)	
v.	)	PLAINTIFF'S CROSS-MOTION
	)	FOR SUMMARY JUDGMENT
	)	
City of Anderson, South Carolina.	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned counsel, hereby moves for an Order granting Plaintiff summary judgment in the above-captioned matter. Plaintiff respectfully requests that this motion be heard along with the Defendant's previously filed motion for summary judgment that the Court has ordered to be heard on March 5, 2013 at 3:00 pm. The Plaintiff's Motion is based upon Rule 56(c), SCRPC, the pleadings in this action, any relevant discovery, Plaintiff's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Plaintiff's Cross-Motion for Summary Judgment to be filed prior to the hearing referenced above, and other materials that the Court may receive in connection with this matter. As can and will be shown by these materials, there is no genuine issue of material fact in this case that is adverse to the Plaintiff's position in this case, and Plaintiff is entitled to judgment as a matter of law. In particular, Plaintiff would show the Court that:

1. "Between 2001 and 2002 the District was involved in numerous discussions and negotiations concerning the formation of an entity that became known as the Anderson County Joint Municipal Water System, and which is now known as the Anderson

Regional Joint Water System (the "Water System")." Affidavit of Steve Wilson¹ (attached hereto as Exhibit 1) at paragraph 3.

2. The March 21, 2002 Water Sale and Purchase Agreement (the "Agreement") was one of the documents negotiated among the Water System, the District, the City and other governmental entities. Wilson Affidavit (Ex. 1) at paragraph 4.
3. While the Agreement was negotiated Duke Energy Company sold to the City "the rights to provide water to the existing Michelin Plant that was within the District's territory.... The District decided not to object to the City providing water to this existing Michelin Plant so as not to impede the progress of the negotiations for the Water System. It was never the intent of the District, however, that the City would be allowed to supply water to any other location, facility or customer within the District, including Michelin." Wilson Affidavit (Ex. 1) at paragraphs 5-6.
4. On the issue of the City's providing water service to the Michelin facilities that existed prior to the date of the Agreement, pages 2-3 of the Agreement provide as follows:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser. (emphasis added)

¹ Mr. Wilson has been the District's General Manager since 1995. Wilson Affidavit (Ex. 1) at paragraph 2.

5. Regarding the intent of this paragraph Mr. Wilson's affidavit states as follows:

The purpose behind this language was to show that the District had no intention of consenting to the City providing any more water beyond that which was being provided to the Michelin facility that existed at that time.

The District did not intend to consent, nor did it consent, to the City providing water to a second Michelin facility or to any other location or customer within the District. If the Water Sale and Purchase Agreement does convey an intent to allow the city to supply water beyond the Michelin facility that existed at that time, such Agreement goes beyond what the District's Board of Directors voted to approve.

Wilson Affidavit (Ex. 1) at paragraphs 8-9.

6. The Agreement shows that the District only consented to the City serving the Michelin Facilities that existed when the parties executed the Agreement. Mr. Wilson's affidavit supports this fact.
7. In the Agreement the District gave no consent for the City to serve future facilities or locations within the District's territory, even those involving Michelin. If the District did provide such consent, however (which is denied), it violated the principles set forth in City of Beaufort v. Beaufort-Jasper Sewer and Water Authority, 325 S.C. 174, 480 S.E.2d 728 (1997), and such act was invalid.
8. "For purposes of determining the validity of a contract requiring or involving a particular action by a municipality, the test for whether the action is governmental or proprietary should be 'whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.' City of Beaufort v. Beaufort-Jasper Sewer and Water Authority, 325 S.C. at 179-80, 480 S.E.2d at 731 (quoting Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 133, 459 S.E.2d 876, 881

(Ct. App. 1995)). South Carolina courts have struck as invalid many different kinds of contracts binding successor governing bodies. See, e.g., Cowart, 319 S.C. at 136, 459 S.E.2d at 882 (employment contract of public officer); Sammøns v. City of Beaufort, 225 S.C. 490, 83 S.E.2d 153 (1954)(invalidating covenant requiring town to maintain on-street parking facilities throughout life of certain municipal bonds, on ground that such a covenant deprives future boards of police power to adopt parking regulations necessary for the public safety and welfare); Newman v. McCullough, 212 S.C. 17, 46 S.E.2d 252 (employment contract of public officer). (emphasis added)

9. "South Carolina's courts have repeatedly held that a municipality's provision of water service to residents and non-residents is a governmental function." City of Beaufort v. Beaufort-Jasper Sewer and Water Authority, 325 S.C. at 179, 480 S.E.2d at 731 (citing F.W. Sossamon v. Greater Gaffney Metro. Utils., 236 S.C. 173, 113 S.E.2d 534 (1960); Looper v. City of Easley, 172 S.C. 11, 172 S.E. 705 (1934), overruled on other grounds by McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985); Calcaterra v. City of Columbia, 315 S.C. 196, 432 S.E.2d 498 (Ct. App. 1993)). "This rule should hold especially true" for an entity like the District, "which has as its sole function" the provision of water service. City of Beaufort v. Beaufort-Jasper Sewer and Water Authority, 325 S.C. at 180, 480 S.E.2d at 732. "Under such circumstances, public policy surely demands" that the District's right to provide water within its own boundaries "be left relatively unimpaired." Id.
10. Even if the District did properly give consent for the City to provide water service to future facilities within the District – and the District denies that it gave such consent or had the ability to do so – such consent has been rescinded. See, e.g., Plaintiff's Answers

to Defendant's Interrogatories. Answer No. 11 (attached hereto as Exhibit 2). See also
Complaint.

For the forgoing reasons, and for the reasons set forth in the materials referenced in the
introductory paragraph above, the Plaintiff respectfully requests that the Court award judgment
to the Plaintiff and grant the relief sought in the Plaintiff's complaint.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., S.C. Bar No. 66287

Post Office Box 2048

Greenville, SC 29602

Tel.: (864) 240-3247 (Telephone)

Fax: (864) 240-3336 (Facsimile)

E-Mail: nnicholson@hsblawfirm.com

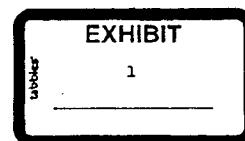
Attorneys for the Plaintiff

February 22, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	C.A. No. 2012-CP-04-02770
West Anderson Water District.	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF STEVE WILSON
	)	
	)	
City of Anderson, South Carolina.	)	
	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, Steve Wilson, who deposes and says as follows:

1. My name is Steve Wilson. I am over the age of 18 and am competent to testify to the matters contained herein.
2. I am the General Manager of the West Anderson Water District (the "District"), and I have held this position since November 1995.
3. Between 2001 and 2002 the District was involved in numerous discussions and negotiations concerning the formation of an entity that became known as the Anderson County Joint Municipal Water System, and which is now known as the Anderson Regional Joint Water System (the "Water System"). As the General Manager of the District, I was one of the District's representatives in the negotiations to form the Water System.
4. One of the documents negotiated in connection with forming the Water System was the Water Sale and Purchase Agreement among the Anderson County Joint Municipal Water System and The Municipalities of Anderson, Clemson, Pendleton and Williamston and the Special Purpose Districts of The Big Creek Water and Sewerage District of Anderson County.



The Broadway Water and Sewerage District of Anderson County, Hammond Water District, Homeland Park Water District, Powdersville Water District, Sandy Springs Water District, Starr-Iva Water and Sewer District, and the West Anderson Water District Dated as of March 21, 2002 (the "Water Sale and Purchase Agreement")

5. During these negotiations, Duke Energy Company sold to the City of Anderson the rights to provide water to the existing Michelin Plant that was within the District's territory.

6. The District decided not to object to the City providing water to this existing Michelin Plant so as not to impede the progress of the negotiations for the Water System. It was never the intent of the District, however, that the City would be allowed to supply water to any other location, facility or customer within the District, including Michelin.

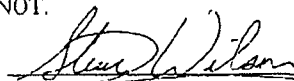
7. The following language found at pages 2-3 of the Water Sale and Purchase Agreement demonstrates the intent of the District as described in paragraph 6 above:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

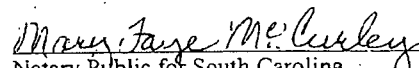
8. The purpose behind this language was to show that the District had no intention of consenting to the City providing any more water beyond that which was being provided to the Michelin facility that existed at that time.

9. The District did not intend to consent, nor did it consent, to the City providing water to a second Michelin facility or to any other location or customer within the District. If the Water Sale and Purchase Agreement does convey an intent to allow the city to supply water beyond the Michelin facility that existed at that time, such Agreement goes beyond what the District's Board of Directors voted to approve.

FURTHER DEPONENT SAYETH NOT.


Steve Wilson

SWORN TO before me this
31st day of January, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 1-30-16

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-04-02770

West Anderson Water District,)
Plaintiff,)

v.)

City of Anderson, South Carolina.)
Defendant.)

**ANSWERS TO DEFENDANT'S
FIRST INTERROGATORIES TO PLAINTIFF**

**TO: CITY OF ANDERSON, SOUTH CAROLINA, DEFENDANT, AND ITS
ATTORNEY, FRANK H. GIBBES, III, ESQ.**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff answers
Defendant's First Interrogatories to Plaintiff, as follows:

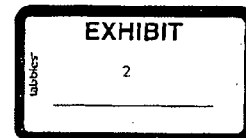
INTERROGATORY NO. 1: Give the names and addresses of persons known to
Plaintiff or counsel to have knowledge concerning the facts of the case and indicate whether or
not written or recorded statements have been taken from such persons and indicate who has
possession of such statements.

ANSWER:

1. Steve Wilson
West Anderson Water District
2767 White Hall Road
Anderson, SC 29625

Mr. Wilson is the District's General Manager and also held that position when the
Agreements were being negotiated. He has knowledge of those negotiations and
the District's role in same.

2. Lamar McLeod
3. J.T. Hopkins



4. Billy McLees
5. Harold Rhodes
6. Meadie Bowen
7. Arthur Dickson
8. Mac McGee
9. Cecil Harbin
10. Dewey McLane

The foregoing individuals were members of the District's Board when the Agreements were being negotiated. They can be contacted C/O West Anderson Water District, 2767 White Hall Road, Anderson, SC 29625

INTERROGATORY NO. 2: For each person known to Plaintiff or counsel to have knowledge concerning the facts of the case, set forth either a summary sufficient to inform Defendant of the important facts known to or observed by such person, or provide a copy of any written or recorded statements taken from such person.

ANSWER: See answer to No. 1 above.

INTERROGATORY NO. 3: List the names and addresses of any expert witnesses whom Plaintiff proposes to use as a witness at the trial of the case.

ANSWER:

William R. McCoy, PE/PLS
F & S Surveyors Engineers Planners, Inc.
211 Society Street
Anderson, SC 29622

Mr. McCoy is a licensed surveyor and is expected to testify that the colored area that the City purports to be the "Michelin Site" on Exhibit 1 of the City's Amended Answer and Counterclaims is not an accurate representation of that property. This opinion is based upon Mr.

McCoy's experience with the property in question, the area surrounding this property, his review of documents listed herein, and his experience as a surveyor.

INTERROGATORY NO. 4: With respect to each expert named in answer to the preceding interrogatory, please state:

- a) The subject matter on which the expert is expected to testify;
- b) The substance of the facts and opinions as to which the expert is expected to testify;
- c) A summary of the grounds for each such opinion; and
- d) The qualifications of such individual which support the basis for your contention that the individual is an expert. (You may produce a copy of the individual's curriculum vitae.)

ANSWER: See answer to No. 3 above.

INTERROGATORY NO. 5: Please identify all photographs, plats, sketches, charts, diagrams, or other prepared documents which pertain to this case and, with respect to each, state the name and address of each person who has custody, possession, or control of each item.

ANSWER:

1. Asset Sale Agreement by and between Duke Energy Corporation and The City of Anderson Dated as of February 20, 2002
2. Asset Purchase Agreement by and between Big Creek Water and Sewerage District, Broadway Water and Sewerage District, Hammond Water Company, Powdersville Water Company, Sandy Springs Water Company, Starr-Iva Water Company, and West Anderson Water Company and Duke Energy Corporation Dated as of February 14, 2000
3. First Amendment to Asset Purchase Agreement Dated as of August 1, 2001
4. Second Amendment to Asset Purchase Agreement Dated as of February 20, 2002
5. Operating Agreement Dated as of February 25, 2002

6. Water Sale and Purchase Agreement among the Anderson County Joint Municipal Water System and The Municipalities of Anderson, Clemson, Pendleton and Williamston and the Special Purpose Districts of The Big Creek Water and Sewerage District of Anderson County, The Broadway Water and Sewerage District of Anderson County, Hammond Water District, Homeland Park Water District, Powdersville Water District, Sandy Springs Water District, Starr-Iva Water and Sewer District, and West Anderson Water District Dated as of March 21, 2002 (the "Water Sale and Purchase Agreement")
7. System map of the West Anderson Rural Water and Sewer Company, Inc. Rev. Date 5-6-08
8. Aerial photograph of the area in dispute
9. ALTA\ACSM land title survey for 10 tracts of land surveyed at the request of Michelin North America, Inc. Dated June 17, 1999
10. Documents attached to July 3, 2012 letter of William R. McCoy
11. Sketch of area in dispute

INTERROGATORY NO. 6: Please state each item or category of damage which Plaintiff is claiming in this lawsuit.

ANSWER: The District has not claimed damages in this lawsuit.

INTERROGATORY NO. 7: With respect to each item or category of damage identified in answer to the preceding interrogatory, please:

- (a) Describe in general terms the damage or damages involved;
- (b) State the amount of damage or damages claimed;
- (c) Set forth in detail the precise manner in which Plaintiff has calculated its claim for such damage or damages;
- (d) Identify each written document, memorandum, bill, check, or other writing pertaining to Plaintiff's claim for this damage; and

- (e) Identify each person (name, address, telephone number, and occupation) who is a witness or has knowledge concerning this item or category of claimed damage or damages.

ANSWER: The District has not claimed damages in this lawsuit.

INTERROGATORY NO. 8: Please describe with specificity the legal and factual basis for the assertion, in ¶ 12 of your Complaint, that "This consent was strictly limited to the provision of services to the existing facilities" of Michelin.

ANSWER: This assertion is based upon the following:

1. The following found at pages 2-3 of the Water Sale and Purchase Agreement:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

2. The non-delegation principles set forth in City of Beaufort v. Beaufort-Jasper Water Auth. 325 S.C. 174, 480 S.E.2d 728 (1997).

3. South Carolina law contract law.

4. The fact that the area that the City purports to be the "Michelin Site" on Exhibit 1 of the City's Amended Answer and Counterclaims is not an accurate representation of that property.

INTERROGATORY NO. 9: Please identify, by page and/or section/paragraph number, any place in the WSPA where the District's consent for the City to serve Michelin facilities located on the Michelin Site is limited to facilities existing on March 21, 2002.

ANSWER: The language quoted above in No. 8 from pages 2-3 of the Water Sale and Purchase Agreement

INTERROGATORY NO. 10: Please identify, by date, author, addressee, and brief description, any document or other writing in which the District and the City agree that the District's consent for the City to serve Michelin facilities located on the Michelin Site is limited to facilities existing on March 21, 2002.

ANSWER: See answers to No. 8 above.

INTERROGATORY NO. 11: Please identify each occasion on which the District has informed the City that the District objects to the City serving Michelin's New Facility as alleged in ¶ 23 of your Complaint and, with respect to each occasion, identify the date, the means of communication, and the participants.

ANSWER: Steve Wilson sent a letter to the City of Anderson on June 22, 2012. Steve Wilson reiterated this position in a meeting with City officials on July 11, 2012.

INTERROGATORY NO. 12: Please describe with specificity the legal and factual basis for the assertion, in ¶¶ 26(c) and (d) of your Complaint, that the District's act or consent "constitutes an unlawful delegation of governmental authority, is an ultra vires act, and is void and unenforceable."

ANSWER: See answer to No. 8 and 9 above.

INTERROGATORY NO. 13: Please describe with specificity the legal and factual basis for the assertion, in ¶ (c) of the prayer for relief in your Complaint, that the District is entitled to an award of "attorneys' fees and costs."

ANSWER: S.C. Code Ann. § 15-77-300.

INTERROGATORY NO. 14: Please identify by author, addressee (if any), title, date, and brief description each document, memorandum, or other writing prepared by, for, or on behalf of the District and its officers, employees, and/or agents which discusses or otherwise addresses the District's assertion that the City is not entitled to provide service to Michelin's Existing Plant and/or New Facility.

ANSWER: The District does not argue that the City should not provide service to Michelin's Existing Plant. The District does contend that it is improper for the City to provide service to Michelin's New Facility. With respect to this contention see Steve Wilson's letter sent to the City of Anderson on June 22, 2012.

INTERROGATORY NO. 15: Please state whether the District contends that Michelin's New Facility will not be located, in whole or in part, on the Michelin Site. If so, please describe the factual basis for such contention.

ANSWER: The area that the City purports to be the "Michelin Site" on Exhibit 1 of the City's Amended Answer and Counterclaims is not an accurate representation of that property. However, it appears that the facility currently under construction is within the colored area purporting to be the "Michelin Site."

INTERROGATORY NO. 16: Please state whether Plaintiff or anyone acting on behalf of Plaintiff, has contacted Michelin concerning providing potable water service to Michelin's

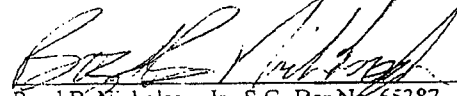
Existing Plant and/or New Facility. If so, identify the date, the means of communication, and the participants.

ANSWER: William McCoy and Steve Wilson spoke with Mike Armor of Michelin at a meeting at Tucker's Restaurant.

The District reserves the right to amend these responses.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., S.C. Bar No. 65387

Post Office Box 2048

Greenville, SC 29602

Tel.: (864) 240-3247 (Telephone)

Fax: (864) 240-3336 (Facsimile)

E-Mail: nnicholson@hsblawfirm.com

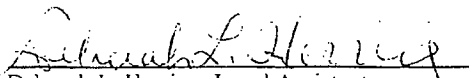
Attorneys for the Plaintiff

November 30, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	C.A. No. 2012-CP-04-02770
West Anderson Water District.	)	
	)	
Plaintiff.	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
	)	
City of Anderson, South Carolina.	)	
	)	
Defendant.	)	

This is to certify that the foregoing Plaintiff's Cross-Motion for Summary Judgment was served in the above-referenced case via e-mail and by placing a copy of same in the United States mail on this the 22nd day of February, 2013. upon the following:

Frank H. Gibbes, III, Esq.
 Gibbes Burton, LLC
 308 East St. John Street
 Spartanburg, SC 29302


 Deborah L. Herring, Legal Assistant
 HAYNSWORTH SINKLER BOYD, P.A.
 Post Office Box 2048
 Greenville, SC 29602-2048
 864.240.4567

February 22, 2013
 Greenville, SC

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-04-02770

West Anderson Water District,

Plaintiff,

v.

City of Anderson, South Carolina,

Defendant.

TRIAL BRIEF OF PLAINTIFF WEST ANDERSON WATER DISTRICT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
BACKGROUND	1
I. The District was formed in 1971 to provide water service within its boundaries	1
II. Water providers in Anderson and Pickens Counties joined together to purchase the water system previously owned by Duke Energy.....	2
A. The City and the District entered the Water Sale and Purchase Agreement (the "Agreement").....	2
B. The City purchased retail assets, not service areas	4
III. Michelin adds a second plant on its property located within the District.....	5
ARGUMENT.....	6
I. The City and the District could not have entered a valid agreement by which the City permanently acquired the right to serve customers within the District.....	6
A. The District cannot transfer service areas within its boundaries	6
1. Any agreement that binds successor boards of a political subdivision with respect to a governmental function is invalid	6
2. No statute clearly authorizes the District to bind successor boards with respect to the provision of water within the District.....	10
3. The canons of statutory construction further support a finding that the General Assembly has not abrogated the rules set forth in <i>Cowart</i> and later cases	13
B. The City's ability to serve outside its corporate limits is limited by statute to narrow situations that are not satisfied here	15
II. The City does not have a contractual right to serve Michelin II.....	16
A. General principles of contract interpretation support the District's construction of the Agreement.....	16
B. The Agreement is not ambiguous	17
C. If the Court finds there is an ambiguity in the Agreement, the evidence and the canons of construction support a finding that the City cannot expand its extra-territorial service within the District to Michelin II	19
III. The City's counterclaims lack merit.....	20
A. The City is not entitled to its requested declaratory relief	20

B.	In the event the District prevails in this action, the City has not been damaged and cannot assert a claim for damages.....	21
CONCLUSION.....		21

This is an action to determine who has the right to provide water to a newly constructed manufacturing plant ("Michelin II") in Anderson County. The City of Anderson ("City") claims it bought that right in 2002; however, there is no dispute that the property is within the boundaries of the West Anderson Water District ("District"), a validly formed public service district. The District filed this action seeking declaratory and injunctive relief because it believes the City has no right to serve Michelin II under any contract and does not have such a right or ability as a matter of South Carolina law.¹

BACKGROUND

I. The District was formed in 1971 to provide water service within its boundaries.

After several wells in the area went dry, the West Anderson Rural Water and Sewer Company, Inc. was incorporated on July 30, 1971 "[t]o acquire, construct, maintain, operate, and provide water distribution and supply facilities . . . to individuals, farms, businesses, corporations and political subdivisions" within a defined territory.² On February 19, 1973, the Anderson County Water Authority granted the District a water franchise and included a service area description.³ On October 18, 2001 and pursuant to S.C. Code Ann. § 33-36-1320, the District filed articles of conversion and became a public service district named the West Anderson Water District.⁴ At that time, the District included a geographical description of "the public service district's service area." The District has continually served as a valid public service district ever since.⁵ The members of the District's Board serve staggered four-year terms.

¹ The District incorporates by reference its filings at the summary judgment stage of this case. The District's Cross-Motion for Summary Judgment and Memoranda are attached as Ex. A.

² Pl. Ex. 1. The geographical area is described in Schedule A to the Articles of Incorporation.

³ Pl. Ex. 2.

⁴ Pl. Ex. 3.

⁵ Pl. Ex. 4.

All filed descriptions of the District have included the real property where Michelin II is located. The City admits that the Michelin site "is located within Plaintiff West Anderson's geographic boundaries."⁶

II. Water providers in Anderson and Pickens Counties joined together to purchase the water system previously owned by Duke Energy.

A. The City and the District entered the Water Sale and Purchase Agreement (the "Agreement").

The District was a member of the Anderson County Water Association ("Association"), which was a partnership of rural and municipal water districts providing services to customers in Anderson and Pickens Counties. In early 2000, the Association's members, including the District entered into an agreement to purchase the entire water system owned by Duke Energy Corporation ("Duke"). The City was not a party to this agreement.

During this time, Michelin North America, Inc. ("Michelin") sought to build a plant within the District ("Michelin I"). Duke entered into negotiations with Michelin to be its water provider, and the District objected. Although the District contested Duke's right to provide service to Michelin I, the District ultimately did not bring legal action pending the closing of the transaction with Duke as to the entire water system. As negotiations with Duke continued, the Anderson Regional Joint Water System ("Joint System")⁷ was formed to purchase the wholesale component of the Duke water system and the City separately purchased Duke's retail water system.

⁶ Def. Response to Pl. Request to Admit.

⁷ The Joint System is comprised of member entities, including the City and the District, and was organized under the provisions of S.C. Code Ann. § 6-25-5 *et seq.*, as a joint water system to serve the interests of its members, its citizens, and its customers and to accommodate the desires of its members in projects and financings. The Joint System was formed "for the purpose of planning, financing, developing, constructing, acquiring, improving, enlarging, selling, leasing, maintaining and operating water facilities within the service areas of its respective members." Pl. Ex. 5 at 1.

On or about March 21, 2002, constituent entities of the Joint System, including the City and the District, entered into the Agreement.⁸ The term of the Agreement was for thirty years, expiring on July 15, 2032. Subsequent to that initial period, the Agreement will automatically renew for five year terms unless a party provides notice of intent not to renew.⁹ At the time of the Agreement, the City was allocated 10.46 million gallons per day ("MGD") (32.7 % of the system's capacity), and the District was allocated 2.24 MGD (7.0% of the system's capacity).¹⁰

For purposes of this action, the District and the City each look to different provisions of the Agreement to support their arguments that they are the entity entitled to serve Michelin II, a new facility located on the same tract of land as Michelin I. The District's arguments rest on the following language:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.¹¹

("Michelin Clause). The provisions at the beginning of the Agreement, including the above-quoted language, were included as consideration for the Agreement by operation of the following

⁸ *Id.*

⁹ *Id.* at ¶ 2.6.

¹⁰ *Id.* at Ex. A. In March 2002, Michelin owned and operated a single rubber processing plant located entirely within the boundaries of the District, Michelin I. At that time, the projected usage for Michelin of .55 MGD was limited to that anticipated for Michelin I. Pl. Ex. 8.

¹¹ Pl. Ex. 5 at 2-3 (emphasis added).

language: “**NOW, THEREFORE**, in consideration of the premises hereinabove set forth and the agreements of the parties hereunder, Seller and Purchasers agree as follows”¹²

The City, on the other hand, points to § 6.02 of the Agreement found in the Article titled “Miscellaneous.” This section provides, “[i]n order to successfully plan and finance additions to each Purchaser’s System, and to avoid future disputes, the parties have agreed upon a Territorial Map of the territories of the parties to the Agreement in order to set out the areas each intends to serve. The Territorial Map is attached hereto as Exhibit D.”

The Agreement further contains a severability clause such that in the event any provision is found to be illegal or invalid, the remainder of the Agreement will remain intact.¹³ Concurrent with the Agreement, the City and the Joint System entered an Operating Agreement that sets forth the groundwork for the parties’ joint use of the newly acquired Duke water system, including the wholesale system purchased by the Joint System and the retail system purchased by the City.¹⁴

B. The City purchased retail assets, not service areas.

As set forth in the Second Amendment to Asset Purchase Agreement¹⁵ between Duke and what would become the Joint System and the Asset Sale Agreement¹⁶ between Duke and the City, the City only purchased certain retail assets, including water mains and pipes and certain contracts (including Duke’s contract to provide service to Michelin I).¹⁷ Duke did not and could not sell service areas or territories. The term “contract” as defined in the Asset Sale Agreement

¹² *Id.* at ¶ 6.02.

¹³ *Id.* at ¶ 6.09

¹⁴ *Id.* at ¶ 3.9(F); Pl. Ex. 6.

¹⁵ Def. Ex. 26 at 1, ¶ 2.2, Ex. A.

¹⁶ Def. Ex. 27 at Background Statement, Ex. A.

¹⁷ Def Ex. 26 at Ex. A; Def. Ex. 27 at Ex.A.

excludes “permits.”¹⁸ The term “permits” includes “all licenses, permits, authorizations, registrations, certificates of occupancy, **franchises** and approvals of any nature issued by any Governmental Authority”¹⁹ Further, Duke received its franchise from the Public Service Commission, which lacks jurisdiction with respect to municipalities. *See Glendale Water Corp. v. City of Florence*, 274 S.C. 272, 474, 265 S.E.2d 41, 42 (1980); S.C. Code Ann. § 58-5-30. Thus, Duke could not have transferred the franchise to the City, even in the absence of the contractual definitions excluding franchises. Instead, the City purchased certain designated retail assets. The District has not made any claim to the retail assets the City purchased from Duke, but instead seeks to protect its right to provide water service within its boundaries.

III. Michelin adds a second plant on its property located within the District.

In 2012, nearly ten years after the parties entered the Agreement, Michelin announced plans to build a second plant on its property located within the District. Both the District and the City communicated with Michelin and Anderson County officials about service to the new facility.²⁰ The City asserted its right to serve Michelin II. The District informed the City that it objected to the City’s provision of water and related services to Michelin II and told the City that any service it provided to the new facility was at its risk.²¹ This action followed.

Michelin II is operational and being served by the City pursuant to a new meter with separate billing from Michelin I. The District stands ready to provide this service and has the requisite capacity and approvals.

¹⁸ Def. Ex. 27 at 2.

¹⁹ *Id.* at 4 (emphasis added).

²⁰ *See, e.g.*, Pl. Exs. 11-12

²¹ *See* Pl Exs. 14-15

ARGUMENT

The City and the District paint two very different pictures of the Agreement, which was made in 2002 when Michelin I was a new facility. The District argues it provided grudging consent to the City's service of Michelin I so that the Agreement would go through. The City argues it purchased as "service area" the property owned by Michelin at the time of the Agreement. As will be shown below, neither the City nor the District could have made a valid agreement permanently ceding territory from the District to the City; therefore, the District must prevail because (1) there is not a valid agreement for the City to serve Michelin II in the absence of consent from the District; and/ or (2) the Agreement itself is limited to Michelin I, and the District is entitled to serve Michelin II as a customer within its boundaries.

I. The City and the District could not have entered a valid agreement by which the City permanently acquired the right to serve customers within the District.

A. The District cannot transfer service areas within its boundaries.

1. Any agreement that binds successor boards of a political subdivision with respect to a governmental function is invalid.

South Carolina courts have repeatedly struck down as invalid contracts entered into by governmental entities that bind their successor bodies or councils through contracts when those contracts relate to a governmental function of that governmental body. *See, e.g., Cunningham v. Anderson County*, 402 S.C. 434, 741 S.E.2d 545 (Ct. App 2013); *City of Beaufort v. Beaufort-Jasper County Water & Sewer Auth.*, 325 S.C. 174, 480 S.E.2d 728 (1997); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995) ("*Cowart I*"), *aff'd* 324 S.C. 239, 478 S.E.2d 836 (1996) ("*Cowart II*"); *Newman v. McCullough*, 212 S.C. 17, 46 S.E.2d 252 (1948). Contracts for governmental functions are separate and distinct from proprietary contracts, which do not suffer from the same limitations. "For purposes of determining the validity of a contract requiring or involving a particular action by a municipality, the test for

whether the action is governmental or proprietary should be 'whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.'" *City of Beaufort* at 179-80, 480 S.E.2d at 731 (quoting *Cowart I* at 133, 459 S.E.2d at 881).

In this case, the South Carolina Supreme Court has already answered this question. "South Carolina's courts have repeatedly held that a municipality's provision of water service to residents and non-residents is a governmental function." *Id.* at 179, 480 S.E.2d at 731; *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993). "This rule should hold especially true" for an entity like the District, "which has as its sole function" the provision of water service. *Id.* at 180, 480 S.E.2d at 732. Where the governmental body has "as its sole function" the provision of water service, "public policy surely demands" that such an entity's right to provide water within its own boundaries "be left relatively unimpaired." *Id.* On this point, *City of Beaufort* relied heavily on *G. Curtis Martin Invest. Trust v. Clay*, 274 S.C. 608, 266 S.E.2d 82 (1980), stating as follows:

Clay suggests that **the provision of utility service, or at least the decision whom to serve, constitutes an exercise of police power (clearly governmental) that may not be delegated.** *Clay* also suggests that **the provision of utility service is especially governmental in nature where the municipal entity at issue was formed for the specific purpose of providing such service.** Like the North Charleston Sewer District, [Beaufort-Jasper Water & Sewer] Authority was formed for the specific purpose of providing utility service in a particular service area. Furthermore, like the contested provision of the contract in *Clay*, the Contested Clauses here deprive Authority of the ability to serve persons they would have the right to serve but for the Contested Clauses, which make Authority's right to serve contingent upon Municipalities' desire to serve the customers. **Under these circumstances, the Contested Clauses are unlawful as a delegation of governmental power not only because they bind future governing boards of Authority, but also because of the nature of the delegation of power itself.**

Id. at 180-81, 480 S.E.2d at 732 (emphasis added).

This long-established rule prohibits an entity's governing board from binding future governing boards in the performance of governmental functions, except to the extent that the General Assembly has specifically authorized such long-term contractual commitments. Any agreement which attempts to do such is invalid under South Carolina law.²² Although the District has general authority pursuant to S.C. Code Ann. § 33-36-1360 to enter contracts of short or long duration, general authorization to contract is insufficient to allow a board to bind successor boards as to a governmental function.

In *City of Beaufort*, the provision that was held invalid was contained in a long-term contract for the sale of water from Beaufort-Jasper Water & Sewer Authority ("BJWSA") to the City of Beaufort. That contract was made pursuant to express statutory authorization contained in BJWSA's enabling legislation, Act No. 784, 1954 S.C. Acts 1947. Act No. 784 empowered BJWSA "to enter into contracts for the sale of water, upon such terms as the parties shall approve, with persons, private corporations, municipal corporations, public bodies, public agencies, and with the United States Government, or any agencies thereof", and "to make contracts of all sorts and to execute all instruments necessary or convenient for the carrying on of the business of the Authority." Nevertheless, the Supreme Court ruled that the particular

²² The City complains that the District is trying to dodge its responsibilities under the Agreement. The District disagrees with this characterization, but even assuming that the City is correct, this argument will not save an invalid contract clause. The same argument was made in *City of Beaufort*, and while the Supreme Court was sympathetic to the City of Beaufort in that case, that sympathy was not enough to change the result. As stated there,

[the] Authority benefited from these contracts for years, and we find it somewhat disingenuous for Authority now to argue that it lacked power to delegate its ability to serve Beaufort and Jasper Counties. Nevertheless, we are compelled to base our decision on controlling legal principles, which dictate that the Contested Clauses represent an unlawful delegation of governmental power.

Id. at 177 n.2, 480 S.E.2d at 730 n.2.

contractual provision restricting the district from serving in certain areas was invalid, even though contained in an otherwise valid contract. Thus, an *ultra vires* contractual provision cannot be saved by embedding it in an otherwise authorized contract, such as the Agreement.

Second, *City of Beaufort* recognizes an exception to this general rule only where the “central, primary function” of a district is not “substantially compromised.” *City of Beaufort*, 325 S.C. at 180 n.4, 480 S.E.2d at 732 n. 4. Here, the Agreement, if construed as the City urges, necessarily implicates the “central, primary function” and in fact the only function of the District—the provision of water inside its boundaries.

With regard to the impact necessary to constitute a “substantial compromise,” the *Clay* case is instructive. There, the offending provision only related to a subdivision’s treatment system that was not yet connected to the District’s main system. Indeed, the offending provision there did not prevent service completely but only prevented it by tie-in to a particular plant; and even that restriction expired by its terms once the subdivision system was connected to the District’s other system components. *Clay* at 610, 266 S.E.2d at 83-84. Nevertheless, that temporary restriction limited to just a small fraction of the District’s territory was held invalid. Here, the City’s argument suggests a greater compromise of the District’s sole governmental function in the form of a complete transfer of the ability to serve a portion of the District for at least thirty years, if not permanently. Accordingly, the language from *City of Beaufort* suggesting an exception for minor delegations of power is inapplicable.

Here, there is no question that the Agreement’s term necessarily purported to bind future District boards and that the portions of the Agreement relating to Michelin I and the Michelin property implicated a governmental function. Therefore, the Agreement, if interpreted to apply

to the District's performance of its governmental function entirely within its own territory, is to that extent *ultra vires* and unenforceable.

2. No statute clearly authorizes the District to bind successor boards with respect to the provision of water within the District.

The Supreme Court has noted an additional exception to the general rule prohibiting governmental bodies from binding successor bodies concerning governmental functions. *Cowart II* at 241, 478 S.E.2d at 838. This exception, first noted in *Newman*, occurs "where the enabling legislation clearly authorizes the local governing body to make a contract extending beyond its members' own terms." *Cowart II* at 241, 478 S.E.2d at 838 (citing *Newman* at 23, 46 S.E.2d at 255.). The test for this exception is as follows: "the enabling legislation must clearly authorize a contract **regarding a governmental function** for a term beyond the terms of the members of the local governing body." *Id.* at 242, 478 S.E.2d at 838 (emphasis in original). In previous briefing, the City has cited three statutes which it claims authorize entities like the District to bind future councils with respect to governmental functions. None of these statutes, however, includes the critical language implicating governmental functions and the ability to bind successor boards as required by *Cowart II*.

First, the City points to S.C. Code Ann. § 33-36-1360(A), and specifically language in subsections (9) and (11) that states that entities like the District may enter into contracts "of short or long duration" and may "make contracts of all kinds and execute all instruments or documents necessary or convenient to carry out the business of the district." This language, however, falls short of "clearly authorizing" a contract "regarding a governmental function" that goes "beyond the terms" of the District's board members.

In *City of Beaufort*, BJWSA's enabling legislation gave BJWSA powers that were just as broad, if not broader, than those that the City points to in § 33-36-1360. Specifically, the Authority's enabling legislation provided the following broad grant of authority:

SECTION 4. Powers further.—The Authority shall be fully empowered to acquire, construct, operate, maintain, improve and extend facilities which would enable it to obtain fresh water in large volume, and to distribute and sell the same, subject to the limitations set forth in Section 3, to persons, firms, corporations, municipal corporations, political divisions, and the United States Government, or any agencies thereof, at any point within its Service Area. To that end, the Authority shall have the following powers:

(14) Subject to the provisions of Section 3, to enter into contracts for the sale of water, upon such terms as the parties thereto shall approve, with persons, private corporations, municipal corporations, public bodies, public agencies, and with the United States Government, or any agencies thereof.

(16) To make contracts of all sorts and to execute all instruments necessary or convenient for the carrying on of the business of the Authority.

(25) To do all other acts and things necessary or convenient to carry out any function or power committed or granted to the Authority.

1954 S.C. Acts 784, §§ 4, 4(14), 4(16), and 4(25) (emphasis added). Despite this broad grant of power, the Supreme Court held that BJWSA, whose “sole function” was the provision of water service, was not authorized to bind future successor bodies by restricting their rights to provide water to residents within Beaufort-Jasper counties. *City of Beaufort* at 180, 480 S.E.2d at 732. Similarly, the Court of Appeals in *Cunningham* found that a statute allowing a county council to “employ [a county manager] for a definite term” was not sufficiently specific to authorize a lame duck county council to enter a three-year contract with a county manager, upholding the trial court's order finding the contract was void. *Cunningham* at 448, 741 S.E.2d at 553 (holding that to satisfy *Cowart II*, the statute must clearly authorize a term extending beyond the terms of the current governing body).

The same analysis applies here. A broad general power to contract is not sufficient to satisfy the test set forth in *Cowart II* as applied in *City of Beaufort* and *Cunningham*. Such a rule does not render these provisions meaningless as the District can enter contracts for non-governmental functions for a short or long duration.

The City has also pointed to S.C. Code Ann. § 6-25-128 with respect to water systems such as the Joint System and notes that such a water system may enter into contracts "concerning the sale or purchase of capacity and output from a project" for up to 50 years. This provision authorizes an authority such as the District to enter into an agreement to buy water. It does not make any provision for an authority to enter an agreement that changes its boundaries or its ability to serve customers within those boundaries, much less to enter into an agreement that would bind successor boards on this point. If that were the case, one board could essentially contract away the District's entire territory if it so chose and any successor board would have no recourse. Moreover, this provision is not found in the enabling legislation for the District. Therefore, this statute does not satisfy the test of *Cowart II* either.

The City further argues that under S.C. Code Ann. § 5-7-60 the District was authorized to provide permission to allow the City to provide water service within the District for the duration of the Agreement's thirty-year term. Contrary to the City's argument, this statute again is not found in the enabling legislation for the District and merely allows a municipality to provide services outside its boundaries under certain conditions with permission. It does not change the powers of other entities such as the District, nor does it indicate any power to enter *ultra vires* agreements. Nothing in this statute provides any indication that a district may enter an agreement changing its boundaries that would bind successor governing boards, much less the clear authorization required by *Cowart II*.

3. The canons of statutory construction further support a finding that the General Assembly has not abrogated the rules set forth in *Cowart* and later cases.

The legislation that the City points to is no more expansive and provides no more powers to the District than do the laws of this state with respect to other districts, cities or counties. Compare S.C. Code Ann. § 33-36-1360 (powers of the District) with Act No. 784 § 4 (powers of BJWSA). For many years, our Courts have held that notwithstanding the broad grant of powers given by Home Rule and in enabling legislation for governmental entities, governing bodies may not bind future bodies on matters relating to governmental functions. When viewed through the canons of statutory construction, this long-standing precedent presents yet another reason why the legislation that the City points to does not give the District the ability to bind successor boards. See *Cunningham* at 448, 741 S.E.2d at 552-53.²³

²³ In *Cunningham*, the Court of Appeals provided the following discussion:

In any event, we do not view the language . . . as clearly authorizing the “definite term” to extend beyond the terms of the outgoing council members. Therefore, it does not fall within *Newman*’s exception to the prohibition against binding successor governing bodies. See *Cowart II*, 324 S.C. at 241, 478 S.E.2d at 838 (“*Newman* allows an exception, however, where the enabling legislation clearly authorizes the local governing body to make a contract extending beyond its members’ own terms.” (emphasis added)); see also *16 Jade St., LLC v. R. Design Const. Co.*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012), *reh’g granted* (May 7, 2012) (holding that if a statute is in derogation of a common law right, it must be strictly construed and not extended in application beyond clear legislative intent); *Doe v. Marion*, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004), *aff’d*, 373 S.C. 390, 645 S.E.2d 245 (2007) (“[A]ny legislation [that] is in derogation of common law must be strictly construed and not extended in application beyond clear legislative intent.”); *id.* (“Therefore, a statute is not to be construed in derogation of common law rights if another interpretation is reasonable.”); *State v. Prince*, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993) (“[I]t is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute.” (citing *Nuckolls v. Great Atl. & Pac. Tea Co.*, 192 S.C. 156, 161, 5 S.E.2d 862, 864 (1939))); *Nuckolls*, 192 S.C. at 161, 5 S.E.2d at 864 (holding that it is presumed that no change in the common-law was intended by the legislature’s enactment of a statute on the same subject unless the language employed clearly indicates such an intention); *id.* (“[T]he rules of the

First, the case law of this state “remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment.” *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993); see *State v. Carson*, 274 S.C. 316, 319, 262 S.E.2d 918, 920 (1980) (“[T]he common law will not be impliedly changed, but only by clear and unambiguous legislative enactment will the settled rules of common law be eroded.”). The law will presume “that no change in the common law was intended by any statute unless the language employed clearly indicates such intention. The rules of the common law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.” *Coakley v. Tidewater Const. Corp.*, 194 S.C. 284, 287-88, 9 S.E.2d 724, 72 (1940). As stated in *Brewer v. Brewer*,

[t]he legislature in the enactment of a statute will not be presumed to intend to overturn long established principles, unless such intention is made clearly to appear by express declaration or by necessary implication. To the contrary, the legislature will be presumed not to intend to overturn the long established principles of law, and the statute will be so construed, unless an intention to do so plainly appears by express declaration or necessary or unmistakable implication, and the language employed admits of no other reasonable construction.

242 S.C. 9, 24, 129 S.E.2d 736, 744 (1963).

Second, the “General Assembly is presumed to be aware of the common law when enacting legislation.” *Cobb v. S.C. Dep’t of Transp.*, 365 S.C. 360, 365, 618 S.E.2d 299, 301 (2005). Moreover, there “is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” *State v. Corey D.*, 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000); see also *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003)

common-law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.”).

Id. at 448, 741 S.E.2d at 552-53.

("Buttressing a plain reading of the statute is the Legislature's inactivity on the issue over the last forty years []). The Legislature is presumed to be aware of this Court's interpretation of its statutes. When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation.")(internal citation omitted).

It would have been easy enough for the General Assembly to have provided that entities like the District may enter into contracts beyond the terms of governing bodies with respect to portions of their service area to be served by other municipalities or districts. The General Assembly did not do that, and this Court may not do what the General Assembly did not. Therefore, the Court may not find that the District somehow sold or gave away part of its territory pursuant to the Agreement.

B. The City's ability to serve outside its corporate limits is limited by statute to narrow situations that are not satisfied here.

In addition to the District's inability to enter an agreement to alienate part of its territory beyond the term of its current governing board, the City may only serve outside its municipal limits if certain statutory requirements found in S.C. Code Ann. §§ 5-7-60 & 5-31-1910 are satisfied. Section 5-7-60 allows a city to sell water outside its municipal limits if it has (1) a contract with a customer, and (2) if the customer in question is "within a designated service area" of another political subdivision, the municipality may serve "when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned." Section 5-31-1910 provides that a city may enter contracts for water service with non-resident, contiguous customers provided those contracts do not exceed two years in duration.

These statutes show there are numerous problems with the City's assertion that it purchased "service areas." The following facts are undisputed: (1) Michelin II is within the

boundaries of the District; (2) Michelin II is not within or contiguous to the City's boundaries; and (3) the District's governing board has never given permission for the City to serve Michelin II.²⁴ For all of these reasons, the City lacks the power to serve Michelin II. As such, the City's proposed construction of the Agreement is in contravention of the above statutes and would therefore be illegal. See *Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 210, 417 S.E.2d 579, 582 (1992) (finding a City's agreement in contravention of a statute to be illegal).

In addition, these statutes show a city may contract outside its boundaries to provide water services. They do not provide that a city may acquire service areas outside its boundaries. As such, the City lacks that power. See *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296, 298 (1911) ("All powers and privileges conferred by the Constitution and statutes on municipal corporations must be held to be limited in their exercise to the territory embraced in the municipal boundaries and for the benefit of the inhabitants of the municipality, unless the Constitution or statute expressly provides that such powers and privileges may be exercised beyond the corporate boundaries, or for the benefit of nonresidents."). Therefore, the City could not have purchased service areas as it now claims.

II. The City does not have a contractual right to serve Michelin II.

A. General principles of contract interpretation support the District's construction of the Agreement.

Generally, contract language must be construed according to its plain meaning. *Holden v. Alice Mfg., Inc.*, 317 S.C. 215, 452 S.E.2d 628 (Ct. App. 1994). If the language is clear and unambiguous, it determines the rights and obligations of the parties as a matter of law and no additional evidence will be considered. *Id.* However, "the subject matter and purpose of the

²⁴ Moreover, the contract between Duke and Michelin, which was assigned to the City, was for a ten-year term. Def. Exs. 30-31.

contract are to be considered in ascertaining the intention of the parties and the meaning of the terms they have used . . . [T]he dry words of the contract should, if possible, be so interpreted as to subserve, not subvert, such intention.” *Dibble v. Dibble*, 248 S.C. 165, 149 S.E.2d 355 (1966). “Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail. . . .” *Parker v. Byrd*, 309 S.C. 189, 193, 420 S.E.2d 850, 853 (1992). Moreover, contracts must be interpreted as a whole “so as to give effect to all of their provisions.” *Reyhani v. Stone Creek Cove Condo II Horizontal Property Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997).

In determining whether an ambiguity exists, the contract is read as a whole document so that an ambiguity cannot be created by pointing out a single sentence or clause. *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). “[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning.” *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968).

B. The Agreement is not ambiguous.

As argued by the District at the summary judgment phase, the only fair reading of the Agreement is that the District agreed to allow the City to serve a single industrial facility within its borders and that there was no such agreement as to other customers or facilities. In the Michelin Clause, the Agreement provides narrow language allowing the City to serve “the industrial facilities of Michelin, which **are located** within the boundaries of West Anderson Water District.” (Emphasis added). This clause is worded in the present tense and clearly only allows service by the City to facilities located in the District at the time of the Agreement. The

District's consent is limited to "providing such service to these industries." That consent is not subject to a broad reading as set forth in the next sentence, "[h]owever, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser."

The above quoted language from the Agreement is not a mere recital, but rather is part of the consideration for the Agreement as a whole. As such, it carries the same force and effect as any other provision of the Agreement. See *M & M Group, Inc. v. Holmes*, 379 S.C. 468, 475-76, 666 S.E.2d 262, 266 (Ct. App. 2008).

The map attached to the Agreement as Exhibit D simply shows the real property where the specifically identified industrial facilities were located at the time of the Agreement. It does not and cannot change the boundaries of the member districts, nor can it be read to confer consent beyond the express terms of the Michelin Clause. As set forth in the Agreement, the map merely shows areas where each party to the agreement "intends to serve." Accordingly, the inclusion of the map does not render the Agreement ambiguous, nor does it change the boundaries of the member entities.

This construction is bolstered by the District's arguments that the District and the City could not have reached an agreement wherein the District essentially would have ceded its territory to the City. Consistent with that argument and the language of the Michelin Clause, the District continues to consent to allowing the City to serve Michelin I. The District does not consent to any additional service by the City within its boundaries.

C. If the Court finds there is an ambiguity in the Agreement, the evidence and the canons of construction support a finding that the City cannot expand its extra-territorial service within the District to Michelin II.

As set forth above, the City's proposed construction of the Agreement, if interpreted to apply to the District's performance of its governmental function entirely within its own territory, would be *ultra vires* and unenforceable. Such a construction is improper given the plain language construction proposed by the District. "An agreement capable of an interpretation which will make it valid or legal will be given such interpretation if the agreement is ambiguous. Such interpretation is preferred to one which renders it invalid." *Romanus v. Biggs*, 214 S.C. 145, 152, 51 S.E.2d 503, 505 (1949). If an agreement can be read in one of two ways, one of which is fully valid and enforceable and the other of which is not, a court must construe the contract in favor of validity. Therefore, the District's construction must prevail.

Because the construction that the City advocates is in derogation of the District's sovereignty and encroaches upon the District's boundaries, the Court should construe this language strictly and only find for the City on this interpretation issue if there is clear and convincing evidence to support its contention. *See, e.g., Estate of Tenney v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 100, 106, 712 S.E.2d 395, 398 (2011). The City cannot make such a showing based on the language of the Agreement. The City's construction also runs contrary to the basic principles set forth in *City of Beaufort*, and the statutory provisions regarding when a city may provide service outside its boundaries.

In addition, the City's focus on §6.02 of the Agreement to the exclusion of the Michelin Clause renders the portion of the Agreement specifically addressing the District's limited consent with respect to Michelin I completely meaningless. If the City bought as "service area" the entire tract owned by Michelin at the time of the Agreement, what meaning could the Michelin Clause possibly have? If the City "owned" the territory, why would it need the District's consent

to provide water there under any circumstances? Such a construction would violate the rule that contracts must be construed in their entirety so as to give effect to all parts of the contract. *Reyhani* at 212, 494 S.E.2d 465, 468. If the drafters of the Agreement intended to refer to service area or to the real property underlying the existing industrial facilities at the time of the Agreement, such a provision would not have been difficult to draft—all it would have required is reference to a deed, plat, or TMS number.

The City could not and did not purchase territory from Duke. Instead it purchased retail assets. Included among those assets was the Duke contract to provide service to Michelin I. In the Agreement, the District expressly consented to the continued service to the Michelin facilities that were located within the District at the time of the Agreement. It did not and has not provided consent to any additional service.

This is consistent with the allocations of capacity assigned to each member of the Joint System in the Agreement. As shown in the correspondence at that time, the allocation to the City for the purpose of supplying Michelin was limited to the anticipated need of Michelin I.²⁵ The City did not seek additional allocations for any anticipated additional facilities on the Michelin property.

For all of these reasons, even if the Court determines that the Agreement is ambiguous, the District's construction should prevail.

III. The City's counterclaims lack merit.

A. The City is not entitled to its requested declaratory relief.

As discussed above, the District is entitled to provide water to Michelin II. Thus, the Court must deny the City's request for declaratory judgment. The District further notes that the

²⁵ See Pl. Ex. 8.

relief requested by the City is broader than the Agreement and the specific facts surrounding Michelin II. Instead, the City seeks an open-ended declaration that the City is entitled to serve any customer on this property. Such a ruling would necessarily violate both *City of Beaufort* and the portion of the Agreement providing limited consent to allow the City to serve the industrial facility of Michelin operating within the District at the time of the Agreement.

B. In the event the District prevails in this action, the City has not been damaged and cannot assert a claim for damages.

The City seeks damages for its expenses in acquiring and providing service to the Michelin tract. However, those expenses were all incurred in the service of Michelin I. The District has not challenged that service; therefore, the City has not been damaged.

Moreover, the District did not make any representations to the City that it would consent to the City's service of Michelin II. To the contrary, the District informed the City that it objected to any such service and would take legal action if necessary. The District further informed the City that any investment it made toward providing service to Michelin II was at its own risk.

Lastly, in the event the Court determines any portion of the Agreement was in contravention of the rules set forth in *City of Beaufort*, the City cannot pursue a claim for damages under an estoppel theory because "[w]hen a municipality goes beyond the law [in entering an agreement], the person who deals with it in so doing does so at his own risk." *Berkeley Elec. Co-op., Inc.* at 210, 417 S.E.2d at 582.

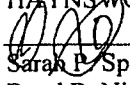
CONCLUSION

For all of the above reasons, the District is entitled to a judgment from this Court that it is entitled to serve Michelin II, and that the City is enjoined and restrained from improperly providing water and related services within the District's service area and territory (with the

exception of Michelin I), subject to the District completing any necessary work to connect Michelin II to its system.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill, SC Bar No. 68337
Boyd B. Nicholson, Jr., SC Bar No. 65387
HAYNSWORTH SINKLER BOYD, P.A.

ONE North Main, 2nd Floor
Greenville, SC 29601-2772
Telephone: 864.240.3200
Facsimile: 864.240.3300

Attorneys for Plaintiff
West Anderson Water District

August 8, 2014

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
West Anderson Water District,	)	
	)	
Plaintiff,	)	DEFENDANT CITY OF
	)	ANDERSON'S PRE-TRIAL BRIEF
vs.	)	
	)	
City of Anderson, South Carolina,	)	C.A. No.: 2012-CP-04-02770
	)	
Defendants.	)	
	)	
	)	

The City of Anderson, South Carolina (the "City") has been providing potable water and related services to industrial facilities of Michelin located in Anderson County since 2002. These facilities are located within the service area (the "Michelin Site") allocated to the City under the terms of a March 21, 2002 Water Sale and Purchase Agreement (the "Agreement") executed by members of what is now the Anderson Regional Joint Water System (the "ARJWS"). Plaintiff West Anderson Water District (the "District") and the City are members of the ARJWS and parties to the Agreement. In the Agreement the District expressly consented to the City providing service to the Michelin Site.

In April 2012, Michelin announced that it would construct a new facility (the "New Facility") adjacent to the existing facility (the "Existing Facility") on the Michelin Site. The City is now serving Michelin's New Facility in spite of objections asserted by the District.¹

In this action the District asks the Court to declare that the City is not entitled to serve the New Facility. Alternatively, the District asks the Court to find that the District's consent to the City's more than decade-long service to Michelin's industrial facilities is unlawful and void.

¹ In both written discovery responses and in deposition testimony by the District's 30(b)(6) designee, the District has conceded that the City is entitled to serve and to continue to serve Michelin's Existing Facility.

The District is wrong on both counts.

The City filed an Amended Answer and Counterclaim. The City's pleading includes affirmative defenses of the statute of limitations, waiver, laches, and estoppel. The City's pleading also includes a counterclaim for damages for unjust enrichment and negligent misrepresentation and a request for declaratory relief.

Based on the evidence that will be presented at trial, the City is entitled to have judgment entered in its favor for at least the following reasons:

1. The language of the Water Sale and Purchase Agreement is plain and unambiguous;
2. The City is entitled to provide potable water services to the Michelin site (inclusive of both the Existing Facility and the New Facility);
3. There is no evidence in the record that would entitle the District to a declaration that the City cannot provide potable water services to Michelin's industrial facilities located on the Michelin site;
4. There is no evidence in the record that would entitle the District to injunctive relief barring the City from providing potable water services to Michelin's industrial facilities located on the Michelin site; and
5. There is no evidence in the record that supports a finding by the Court that the District's consent to the City providing potable water services to the Michelin site is an unlawful delegation of governmental authority, ultra vires, or void and unenforceable.

STATEMENT OF FACTS

On February 20, 2002, the West Anderson Water District (the "District") and other water districts entered into a Second Amendment to Asset Purchase Agreement with Duke Energy Corporation ("Duke"). In the amended agreement the District expressly approved Duke selling "the retail portion of the water system to the City of Anderson, South Carolina." Included in the amended agreement with Duke is a "Service Area Boundary Description" and map outlining the

City's service area, which encompasses the site on which the industrial facilities of Michelin are located.

On February 20, 2002, the City entered into an Asset Sale Agreement with Duke whereby the City purchased transmission lines, storage tanks, and related facilities generally comprising Duke's retail water system. Included in the agreement with Duke is a "Service Area Boundary Description" and map outlining the City's service area, which encompasses the site on which the industrial facilities of Michelin are located. As part of the City's purchase, Duke assigned to the City the Water Service Agreement (the "WSA") between Duke and Michelin dated July 3, 2000.

On March 21, 2002, the City, the District, and other members of what is now the ARJWS entered into a Water Sale and Purchase Agreement (the "Agreement"). Under the terms of the Agreement, each member of the ARJWS agreed to purchase water from the ARJWS to provide service to customers located within its defined service area. "In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes...", the parties to the Agreement "agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve." The service area assigned to the City on the Territorial Map includes the site on which the industrial facilities of Michelin are located. As part of the Agreement, the District expressly consented to the City providing potable water and related services to the Michelin Site on which "the industrial facilities of Michelin" are located.

The City has been providing potable water and related services to Michelin facilities located on the Michelin site under the terms of the WSA and the Agreement continuously since 2002. During the period from February 20, 2002 to the present, the City relied on the District's express consent when the City incurred significant costs and expenses (a) in acquiring the necessary infrastructure to serve the Michelin Site from Duke, (b) in purchasing potable water capacity to

serve the Michelin Site from the ARJWS, and (c) in upgrading the existing water system to serve the Michelin Site.

In or about April 2012, Michelin announced that it would construct a New Facility to manufacture tires for large construction equipment on the Michelin Site that the City has served since 2002. The New Facility is located within the service area originally allocated to the City in the Agreement as shown on the Territorial Map.

In or about June 2012, the District provided the City written notice that the District objected to the City serving Michelin's New Facility. The City advised the District that the City had the right to serve the New Facility under the 2002 Agreement and the City proceeded to do so.

After the District commenced this action, the City took 30(b)(6) deposition testimony from the District. The District's 30(b)(6) designee was Steve Wilson. Wilson has been employed by the District since 1996 and has served as General Manager since 1995. He participated in negotiations for the 2002 Agreement on behalf of the District. Wilson conceded that the City has the right to serve Michelin's Existing Facility. Wilson stated that the District will honor that commitment notwithstanding the District's assertion in this lawsuit that the District's original Board action consenting to the City serving the Existing Facility is void.

When questioned, the District's 30(b)(6) designee could not point to any express language in the Agreement that limits the City's right to serve the Michelin Site to the Existing Facility. Nor could he explain why the Court should ignore the plain meaning of § 6.02 of the Agreement and the Territorial Map attached as Exhibit D which confirm the City's right to serve the Michelin Site (inclusive of both the Existing Facility and the New Facility).

ARGUMENT

1. The Agreement Is Unambiguous and Entitles the City to Serve Michelin's Industrial Facilities

The critical issue here is the proper construction of the terms of the 2002 Water Sale and Purchase Agreement. In Ward v. West Oil Co., Inc., 379 S.C. 225, 665 S.E.2d 618 (Ct. App. 2008), the Court summarized legal principles governing construction of a contract:

The construction of a clear and unambiguous contract is a question of law for the court. Ward, 379 S.C. at 239 (citation omitted).

If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. Id. at 239 (citation and quotation marks omitted).

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Contracts should be liberally construed so as to give them effect and carry out the intention of the parties. The parties' intention must, in the first instance, be derived from the language of the contract. In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. Id. at 241 (citations and quotation marks omitted).

When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning. Id. at 246 (citations omitted).

The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. The primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used. Documents will be interpreted so as to give effect to all of their provisions, if practical." Id. at 242 (citations and quotation marks omitted).

In Ward the Court also stated: "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language

employed, would make it reasonable, fair and just, the latter construction must prevail.” *Id.* at 247 (citation omitted).

Here, the relevant language contained in the Agreement is unambiguous and is subject to only one reasonable interpretation. When multiple water districts and municipalities combined together to form a statutorily permitted joint water system, the members foresaw the potential for future disagreements about each member’s service territory and took contractual steps to eliminate future disputes. Specifically, Section 6.02 of the Agreement, entitled “Territorial Boundaries,” provides that “[i]n order to successfully plan and finance additions to each Purchaser’s System, and to avoid future disputes...,” the parties “agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve.” The Territorial Map is attached to and made part of the Agreement as Exhibit D. The Territorial Map clearly and unambiguously sets forth the “Territorial Boundaries” for each member’s service area.

As shown by the Territorial Map, the service area assigned to the City includes the site on which the industrial facilities of Michelin are located. This includes both Michelin’s Existing Facility and Michelin’s New Facility. That this was the parties’ intent is confirmed by prefatory language contained in the recitals in the “Background and Findings” section of the Agreement.²

It is presently intended by the parties hereto that the City of Anderson will serve ... (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. ... West Anderson Water District consent[s] to the City of Anderson’s providing

² There is conflicting authority on the effect to be given prefatory clauses. “[G]enerally, ‘whereas’ clauses are not considered contractual and cannot be permitted to control the express provisions of the contract.” Stevens Aviation, Inc. v. Dyncorp International LLC, 394 S.C. 300, 715 S.E.2d 655 (Ct.App. 2011). “A covenant may be as obligatory when expressed by way of recital as if expressed in the formal part of the agreement.” M&M Group, Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262 (Ct.App. 2008).

such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of ... West Anderson Water District without the written consent of such Purchaser.

The March 21, 2002 Water Sale and Purchase Agreement was the third part of a complex series of transactions that were necessary to creation of the ARJWS. This Agreement followed two earlier agreements with Duke Energy Corporation: one under which the ARJWS and its members (exclusive of the City) purchased Duke's wholesale water system; a second under which the City purchased Duke's retail water system.

Not coincidentally, the City's "territorial boundaries" (service area) shown on the Territorial Map that is Exhibit D to the March 21, 2002 Water Sale and Purchase Agreement are identical to the City's "retail service area" shown on the Service Area Map that is attached to each of the agreements with Duke. Moore Affid. Exh. A and B. Moreover, each of the agreements with Duke contains a narrative description of the City's "retail service area" that is depicted on the Service Area Map that is attached to each of the agreements with Duke. The narrative states that the City's "retail service area" includes the "Michelin Plant property."

"[I]n the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together. Furthermore, where the instruments have not been executed simultaneously but relate to the same subject matter and have been entered into by the same parties, the transaction comprising the contract will be considered as a whole." Ward, 379 S.C. at 244-245 (citations and quotation marks omitted).

A contract should receive a sensible and reasonable construction and not such construction as will lead to absurd consequences or unjust results. Holden v. Alice Manufacturing, Inc., 317 S.C. 215, 221, 452 S.E.2d 682 (Ct. App. 1994). Under any "sensible and reasonable construction" of the Agreement, the City is entitled to provide potable water services to "the industrial facilities of Michelin" that are located on the Michelin Site – including both the Existing Facility and the New Facility.

To suggest otherwise would lead to "absurd consequences or unjust results." During the period from February 20, 2002 to the present, the City reasonably relied on the District's express consent when the City incurred significant costs and expenses (a) in acquiring the necessary infrastructure to serve the Michelin Site from Duke, (b) in purchasing potable water capacity to serve the Michelin Site from the ARJWS, and (c) in upgrading the existing water system to serve the Michelin Site. A fair inference is that the City did so with the expectation that Michelin would be successful and have increased potable water needs in the future. The City undoubtedly would not have incurred this expense had it not known it had the right to serve any and all industrial facilities of Michelin that might be located on the Michelin Site.

2. Even If the Court Finds the Agreement Ambiguous, the City is Entitled to Serve Michelin's Industrial Facilities

In Ward v. West Oil Co., Inc., 379 S.C. 225, 665 S.E.2d 618 (Ct. App. 2008), the Court addressed the manner in which a court should proceed if a contract is ambiguous:

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." ... "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning."

665 S.E.2d at 626 (citations omitted).

Whether a contract's language is ambiguous is a question of law. ... Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties.

Id. (citations omitted)

The courts, in attempting to ascertain this intention, will endeavor to determine, the situation of the parties, as well as their purposes, at the time the contract was entered." ... [By] doing so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered into so that it may judge the meaning of the words and the correct application of the language."

Id. at 627.

The City will present clear and convincing evidence at trial establishing that the parties to the 2002 Agreement intended for the City to provide potable water services to Michelin and any other customer that had facilities on the Michelin Site. In short, when the District signed the 2002 Agreement, the District gave its express consent, statutorily authorized, to the Michelin Site being included in the City's retail service area regardless of the specific customer or customers who occupied the Site. That this was the parties' intent and agreement is amply demonstrated by the common theme and consistent treatment of this issue in the February 2002 Second Amendment to Asset Purchase Agreement, the February 2002 Asset Sale Agreement, and the March 2002 Water Sale and Purchase Agreement.

3. The District's Consent to the City's Provision of Service is Valid

The District argues in the alternative that its consent to the City's provision of service to Michelin's industrial facilities constitutes an unlawful delegation of governmental authority and is thereby void and unenforceable. The District asserts that the consent it gave more than ten years ago is void because (a) the WSPA extends beyond the term of the District's then current governing body without statutory authority to do so and/or (b) the District's consent involves a "substantial compromise[]" of its governmental function and authority. The City respectfully submits that the District is wrong on both counts. Such consent is specifically authorized by S.C. Code Ann. §§ 5-7-60, 33-36-1310, and 6-25-5 et seq.

As an initial matter, South Carolina Code Section 5-7-60, outlining the powers and functions of municipalities, provides that a municipality

may perform any of its functions ... in areas outside the corporate limits of such municipality by contract ... except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, [...]. *Provided, however, the limitation as to service areas of other municipalities or political subdivisions shall not apply when permission for such municipal operations is approved by the governing body of the other municipality or political subdivision concerned.*

S.C. Code Ann. § 5-7-60 (emphasis added). The District's consent to the City's provision of service within the District's geographic boundaries is therefore expressly contemplated and sanctioned by the legislature.

A. THE LEGISLATURE SPECIFICALLY AUTHORIZED A PUBLIC SERVICE DISTRICT TO ENTER INTO LONG TERM CONTRACTS FOR THE EXPRESS PURPOSE OF PARTICIPATING IN A JOINT WATER SYSTEM.

On July 20, 2001, the Governor signed into law Act No. 78 (the "Act"). The Act allowed nonprofit corporations organized for purposes of providing water services to elect to become public service districts. Simultaneously, the Act amended the Joint Water Systems Act to allow these newly converted public service districts to become members of joint water systems. Act No. 78 2001 (copy attached as Exh. A).³ In promulgating this Act, which was limited to nonprofit corporations organized for the purposes of providing water service, the Legislature found:

³ The act is entitled as follows: "AN ACT TO AMEND CHAPTER 36 OF TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 8 SO AS TO PROVIDE THAT THE MEMBERSHIP OF A NONPROFIT CORPORATION ORGANIZED UNDER THE PROVISIONS OF CHAPTER 35 MAY ELECT FOR THE CORPORATION TO BECOME A PUBLIC BODY POLITIC AND CORPORATE; AND TO AMEND SECTION 6-25-20, AS AMENDED, RELATING TO JOINT MUNICIPAL WATER SYSTEMS, SO AS TO INCLUDE AS A VOTING MEMBER A NONPROFIT CORPORATION WHICH HAS BECOME A PUBLIC SERVICE DISTRICT PURSUANT TO ARTICLE 8, CHAPTER 36 OF TITLE 33 AS ADDED BY THIS ACT."

The General Assembly finds, under certain conditions, that the not-for-profit corporations organized under Act 1030 of 1964, for the purposes of providing water services, should be granted the right to elect to become public bodies politic and corporate for reasons including but not limited to, the following: [...] the right to participate in a joint municipal water system as authorized under Chapter 25, Title 6 of the 1976 Code [....].

Act No. 78 2001. S.C. Code Ann. § 33-36-1310(A) ("For the exclusive purposes of participating in a joint municipal water system ..., a nonprofit corporation incorporated for the purposes of providing water and sewer services ... may elect ... to become a public service district.").

The Act established the powers to be enjoyed by the newly converted public service districts:

The newly converted district has all the rights and powers of a public body politic and corporate of this State including, without limitations, all the rights and powers necessary or convenient to carry out and effectuate its purposes including, but not limited to the following rights and powers to:

[...] (9) enter into contracts of **short or long duration**;

[...] (11) make **contracts of all kinds** and execute all instruments or documents **necessary or convenient to carry out the business of the district** [....].

Act No. 78 2001. (emphasis added). These enumerated powers duplicate and are identical to the powers conferred on joint water systems under the then current version of the joint water system statute. (Compare S.C. Code § 33-36-1360 (2003) with S.C. Code § 6-25-100 (2003), copies of which are attached as Exh. B).

B. THE WEST ANDERSON RURAL WATER AND SEWER COMPANY, INC. ACTED IN RELIANCE ON THE ACT

On December 31, 2001, the West Anderson Rural Water and Sewer Company, Inc., converted to a public service district pursuant to S.C. Code § 33-36-1310 et seq. In 2002, the District became a member of what is now the Anderson Regional Joint Water System (ARJWS).

On March 21, 2002, the City, the District, and other members of the ARJWS entered into the WSPA. Each party, including the District, represented that it had authority to enter into the WSPA:

Section 2.04. Representations of Each Purchaser. Each Purchaser hereby represents that it is a validly created governmental entity and a public body politic and corporate of the State of South Carolina owning and operating such Purchaser's System which is, or will be at the time of the provision of water pursuant to this Agreement, capable of receiving water as contemplated by this Agreement; that *it has all necessary powers and authority to undertake and perform its obligations under this Agreement*; and that it has taken all necessary action to authorize the execution and delivery of this Agreement.
[...]

The parties agreed to an initial thirty-year term for the WSPA:

Section 2.06. Term of Agreement. This Agreement shall be effective on the date of Seller's acquisition of the System and shall extend for an initial period commencing on such date and extending until July 15, 2032 and thereafter, absent receipt of notice from any Purchaser of its intent not to renew, shall be automatically extended for five periods.
[...]

Under the terms of the WSPA, each member of the ARJWS agreed to purchase water from the ARJWS to provide service to customers located within its defined service area and to assume certain obligations for payment of ARJWS bonded debt:

Each of the Purchasers has determined that it is in the best interests of its customers and residents located within its respective service area to participate in the acquisition by Seller of the Duke Facilities by becoming a member of Seller and to purchase certain rights to the use of the Duke Facilities. By joining together, economies of scale can be achieved and each Purchaser will be able to acquire a safe and secure source of potable water. Each Purchaser, recognizing the benefits to be gained by such joint action, has determined, pursuant to the provisions of this agreement, to purchase the right to receive a specified allocated capacity defined in terms of millions of gallons of potable water per day and to pay for such amount of potable water by assuming the responsibility for a corresponding amount of the debt service on bonds issued by Seller to defray the acquisition of the Duke Facilities.
[...]

Each member secured its obligation to pay for ARJWS debt by granting the ARJWS a “lien upon the revenues of each Purchaser’s System.”

**C. THE DISTRICT’S ASSERTION THAT IT LACKED AUTHORITY
TO BIND SUCCESSOR BOARDS IN 2002 IS IN ERROR**

In an attempt to shirk contractual commitments that it made more than a decade ago, the District argues that its consent to the City’s provision of service to the Michelin Site is void under City of Beaufort v. Beaufort-Jasper County Water and Sewer Authority⁴ and Cunningham v. Anderson County.⁵ The Supreme Court concluded in Beaufort-Jasper that a contract entered into by a water authority was void, in part, because it bound successor governing boards by extending indefinitely beyond the contracting board’s term. Beaufort-Jasper, 325 S.C. at 181.

The District’s reliance on Beaufort-Jasper is misplaced. The Supreme Court decided Beaufort-Jasper in 1997 - four years before the Governor signed Act No. 78 into law on July 20, 2001. Since enactment of Act No. 78, special purpose districts such as the District have had the power to “enter into contracts of **short or long duration**” and to “**make contracts of all kinds** and execute all instruments or documents necessary or **convenient to carry out the business of the district.**” S.C. Code § 33-36-1360 (emphasis added).

Act No. 78 was passed against the backdrop of Beaufort-Jasper, which was decided four years earlier. A basic rule of statutory construction is that the legislature is “presumed to be aware of [judicial] interpretation of its statutes.” Henry-Davenport v. School District of Fairfield

⁴ 325 S.C. 174, 480 S.E.2d 728 (1997)

⁵ Cunningham, Slip. Op. No. 5972 (Ct.App. Jan. 15, 2013; withdrawn, substituted, and refiled on Feb. 27, 2013). Citing Beaufort-Jasper, the Court in Cunningham found that Anderson County could not enter into a “for cause” employment contract with its County Administrator because the County’s enabling legislation did not allow it to enter into contracts extending beyond the term of the current council. Cunningham is distinguishable. In contrast to the vague language relied upon by the plaintiff in Cunningham, the District here was explicitly authorized by statute to enter into long-term contracts.

County, 391 S.C. 85, 89, 705 S.E.2d 26, 28 (2011)(citing State v. Coin Operated Video Game Machines, 338 S.C. 176, 188, 525 S.E.2d 872, 879 (2000)); Wehle v. South Carolina Retirement System, 363 S.C. 394, 611 S.E.2d 240, 245 (2005); State v. Corey D., 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000)("[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects."); Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997); Cowan v. Allstate Insurance Co., 351 S.C. 626, 571 S.E.2d 715 (Ct.App. 2002). Cf. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003)("When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court's interpretation").

Not only was the legislature aware of Beaufort-Jasper, it obviously intended to change the result for newly converted public service districts by conferring upon them the power to enter into contracts of "short or long duration" so they could make the contractual commitments necessary to become members of a joint water system. Act No. 78 2001; S.C. Code § 33-36-1360(A)(9). If the legislature had not intended to permit long-term contracts, it would have had no reason to include the "short or long" language in the Act. Courts "must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something." Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (citation omitted). Furthermore, courts "are to construe a statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." 16 Jade St., LLC v. R. Design Const. Co., 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012), *reh'g granted* (May 7, 2012); Hinton v. S.C. Dep't of Probation, Parole and Pardon Svcs., 357 S.C.

327, 592 S.E.2d 335, 343 (Ct.App.2004) (“[The Court] should seek a construction that gives effect to every word of a statute.”).

Moreover, if the court were to adopt the contrary interpretation, it would effectively dismantle the entire scheme of the ARJWS and undo over a decade of interlocking contractual and loan commitments. This interdependence is expressed in the terms of the Agreement itself, where the parties recognized that “[b]y joining together, economies of scale can be achieved and each Purchaser will be able to acquire a safe and secure source of potable water.” McCoy Affd., Exh. 1, p. 3. Furthermore, the parties agreed to purchase “the right to receive a specified allocated capacity” and to pay for such water “by assuming the responsibility for a corresponding amount of the debt service on bonds issued by Seller to defray the acquisition of the Duke Facilities.” Id. The parties also agreed to grant to the ARJWS a pledge of and lien upon the revenues of each party’s system. Id. at 14-18.

Such interdependence is also contemplated by the legislative grants of power to joint water systems. Joint water systems – like the ARJWS – have statutory authority to enter into contracts “concerning the sale or purchase of capacity and output from a project” for up to fifty years. S.C. Code § 6-25-128. If a joint water system can validly enter into contracts for a term extending beyond its governing board, it follows that members of the ARJWS, including public service districts, must be able to do the same.

Indeed, as discussed above, the very purpose of the act allowing non-profit water service companies to elect to become public service districts is to facilitate such participation. If public service districts are unable to enter into contracts in the same manner as joint systems, contracts dependent upon multiyear financing schemes and central to the functioning of joint systems – like the WSPA at issue here – would be impossible. Courts must “reject a statutory

interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Accordingly, Section 33-36-1360 should be read to sanction contracts entered into by a public service district that extend beyond the term of its current board.

D. THE WSPA DOES NOT “SUBSTANTIALLY COMPROMISE” THE DISTRICT’S GOVERNMENTAL FUNCTION AND AUTHORITY.

In addition to being statutorily authorized to enter into long-term contracts, the District’s consent to the City’s provision of service to the Michelin Site is also valid because it constitutes a minor delegation of governmental authority and does not “substantially compromise” its discretion or ability to function. In Beaufort-Jasper, a water and sewer authority granted certain municipalities the option of providing water service to a county within the boundaries of the authority in exchange for the municipalities agreeing to purchase water from the authority. Beaufort-Jasper, 325 S.C. at 177. The areas contemplated were within the boundaries of the authority. Under the agreement, the authority, however, could not provide service to those areas unless the municipalities declined to do so. Id. at 181.

Finding the provision of water and sewer service to be a governmental function, the court stated that the discretion of a governing body or its successor to so provide must be left “relatively unimpaired.” Id. The Court found that the right of first refusal in that case constituted an unlawful delegation of governmental authority, “not only because [it bound] future governing boards,” but also because of “the nature of the delegation of power itself”. Id. at 180-182.

Emphasizing the sweeping authority delegated to the municipalities in that case, the Court found that the “[m]unicipalities are not simply operating Authority’s system; rather, they have the power to decide when Authority may provide water to anyone in its own service area.”

Id. at 182. The Court distinguished such comprehensive delegation from valid “minor delegations of power,” which do not “substantially compromise” the primary function of a special purpose district. Id. at 180, n. 4.

In contrast to the broad delegation conferred upon municipalities in Beaufort-Jasper, the scope of the District’s consent here is circumscribed. As the Territorial Map graphically depicts, the Michelin Site comprises only a small part of the District’s service area. As specifically provided in the Water Sale and Purchase Agreement, the District retains the exclusive right to serve customers located elsewhere in its service area. Rather than a right of first refusal, which rendered the water authority’s ability to provide service contingent upon the whim of the municipalities, the District here consented only to the City’s provision of service to a specifically defined area. Rather than allowing the City to decide when and where it would provide service to “anyone in its own service area,” the District exercised its right to make its own decision when it expressly consented to the City serving the industrial facilities of Michelin in the Agreement.

In 2001, the legislature spoke in plain and unequivocal language in Act No. 78. Long-term contracts entered into by public service districts like the District here are not only valid, they are vital to the functioning of joint water systems like the ARJWS. Taking advantage of Act No. 78, the District made long-term contractual commitments to the ARJWS and other members of the ARJWS when it entered into the 2002 WSPA. The District did so to induce other members to make similar commitments. Having induced others to commit, the District should not now be heard to say its own commitments are void. As the court in Beaufort-Jasper recognized, it is “disingenuous” for the District – ten years later - to claim that it lacked the authority to do so. Beaufort-Jasper, 325 S.C. at 177, n. 2.

4. CITY COUNTERCLAIM

Should the Court deny the City the right to serve the Michelin Site and afford this right to the District, the City will lose the value of its investment in acquiring infrastructure from Duke to serve the Site, in purchasing potable water capacity from the joint system to serve the Site, and the cost of upgrades necessary to serve the Site. In this event, the City is entitled to have judgment entered in favor of the City against the District for this amount based upon the City's claim of unjust enrichment and negligent misrepresentation.

CONCLUSION

For the foregoing reasons, the City of Anderson respectfully submits that this Court should enter Judgment in favor of the City on the claims asserted by the District and dismiss the District's claims with prejudice. Should the Court grant Plaintiff's claims, the City respectfully asks the Court to enter judgment in favor of the City against the District on the City's counterclaim.

Respectfully submitted,

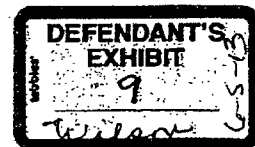


Frank H. Gibbes, III (#2461)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
fgibbes@gibbesburton.com
(864) 327-5000
(864) 327-5001 (fax)

ATTORNEYS FOR THE DEFENDANT

August 8, 2014
Spartanburg, South Carolina

EXHIBIT A



South Carolina General Assembly
114th Session, 2001-2002

[Roll to History Page](#)
[Roll to Previous Versions Links List](#)
[Scroll to Full Text](#)
[Download This Bill](#) in Microsoft Word format

Bill 3946

Current Status

Bill Number:	3946
Ratification Number:	159
Act Number:	78
Type of Legislation:	General Bill GB
Introducing Body:	House
Introduced Date:	20010418
Primary Sponsor:	Cooper
All Sponsors:	Cooper, Townsend, White, Thompson, Martin and Stille
Drafted Document Number:	1:\council\bill\pt\1407dw01.doc
Date Bill Passed both Bodies:	20010621
Date of Last Amendment:	20010621
Governor's Action:	S
Date of Governor's Action:	20010720
Subject:	Nonprofit corporation, membership may elect to become public body politic and corporate; Businesses, Charitable Organizations

History

y	Date	Action Description	Com	Leg Involved
-----	20010802	Act No. A78		
-----	20010720	Signed by Governor		
-----	20010628	Ratified R159		
Senate	20010621	Ordered enrolled for ratification		
Senate	20010621	Conference Committee Report adopted	88 SCC	
Senate	20010621	Conference Committee Report withdrawn		
House	20010621	Conference Committee Report adopted	98 HCC	
House	20010621	Recommitted to Conference Committee	98 HCC	
House	20010621	Reconsidered vote whereby		
		Conference Committee Report was adopted	98 HCC	
House	20010620	Conference Committee Report adopted	88 SCC	
Senate	20010607	Conference powers granted, appointed Senators to Committee of Conference	98 HCC	Waldrep O'Dell Alexander
House	20010607	Conference powers granted, appointed Reps. to Committee of Conference		Harrell Cooper A. Young
House	20010607	Insists upon amendment		
Senate	20010607	Non-concurrence in House amendment		
House	20010606	Senate amendments amended, returned to Senate with amendment		
House	20010606	Debate adjourned on Senate amendments		
-----	20010604	Scrivener's error corrected		
Senate	20010601	Read third time, returned to House with amendment		
Senate	20010601	Committee amendment adopted		
Senate	20010531	Unanimous consent for third reading on Friday, 20010601		
Senate	20010531	Read second time, carrying over all amendments to third reading		
Senate	20010531	Polled out of Committee: Favorable with amendment	11 SJ	
Senate	20010502	Introduced, read first time, referred to Committee	11 SJ	
se	20010502	Read third time, sent to Senate		
House	20010501	Read second time		
House	20010426	Recalled from Committee	25 HJ	

House 20010418 Introduced, read first time,
referred to Committee

25 HJ

Versions of This Bill

Revised on April 26, 2001 - Word format
Revised on May 31, 2001 - Word format
Revised on June 1, 2001 - Word format
Revised on June 4, 2001 - Word format
Revised on June 6, 2001 - Word format
Revised on June 21, 2001 - Word format

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A78, R159, H3946)

AN ACT TO AMEND CHAPTER 36 OF TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 8 SO AS TO PROVIDE THAT THE MEMBERSHIP OF A NONPROFIT CORPORATION ORGANIZED UNDER THE PROVISIONS OF CHAPTER 36 MAY ELECT FOR THE CORPORATION TO BECOME A PUBLIC BODY POLITIC AND CORPORATE; AND TO AMEND SECTION 6-25-20, AS AMENDED, RELATING TO JOINT MUNICIPAL WATER SYSTEMS, SO AS TO INCLUDE AS A VOTING MEMBER A NONPROFIT CORPORATION WHICH HAS BECOME A PUBLIC SERVICE DISTRICT PURSUANT TO ARTICLE 8, CHAPTER 36 OF TITLE 33 AS ADDED BY THIS ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Findings

SECTION 1. Act 1030 of 1964 was enacted to take advantage of federal funding available through the Farmer's Home Administration Act to provide for the growing need for utility and other services, especially in rural areas. Since that time, the availability of the funding has diminished, and federal and state funding are more often provided from additional sources. The General Assembly finds, under certain conditions, that the not-for-profit corporations organized under Act 1030 of 1964, for the purposes of providing water services, should be granted the right to elect to become public bodies politic and corporate for reasons including, but not limited to, the following:

- (1) the opportunity to receive funding, loans, and grants from other sources such as the State Revolving Fund will be increased or enhanced;
- (2) the right to participate in a joint municipal water system as authorized under Chapter 25, Title 6 of the 1976 Code will be afforded; and
- (3) the cost of borrowing money for infrastructure construction and expansion will be lower and growth demands more economically met.

Procedures for nonprofit corporation providing water and sewer services to become a public service district

SECTION 2. Title 33, Chapter 36 of the 1976 Code is amended by adding:

"Article 8

Election to Become Public Body Politic and Corporate

Section 33-36-1310. (A) For the exclusive purposes of participating in a joint municipal water system as authorized under Chapter 25, Title 6, a nonprofit corporation incorporated for the purposes of providing water or water and sewer services, pursuant to the provisions of this chapter may elect, by resolution, to become a public service district, a public body politic and corporate:

(1) before January 1, 2002, upon a majority vote of its members constituting a quorum present at a duly called and noticed meeting; or

(2) on and after January 1, 2002, upon a majority vote of fifteen percent of its members present or by proxy at a duly called and noticed meeting.

(B) Notice of this meeting must be given by regular mail, addressed to the last known address of the member, and mailed not less than ten days prior to the meeting. The secretary of the corporation shall certify the date of mailing. The notice shall state the purpose, time, and place of the meeting.

(C) Upon a favorable vote, the chief executive officer of the corporation shall petition the Secretary of State to issue a new charter to convert and constitute the nonprofit corporation a public service district, a public body politic and corporate.

Section 33-36-1320. (A) The petition shall include:

- (1) the name of the district;
- (2) an attached copy of the resolution adopted, certified by the secretary of the corporation;
- (3) the name of the current board of directors, their terms of office, and expiration dates;
- (4) the desire to become a public body corporate and politic; and
- (5) a word description and an attached map showing the present and existing boundaries of the service area.

(B) Upon receipt of the petition, the Secretary of State must verify the contents of the petition and their compliance with subsection (A). Upon verification, the Secretary of State must issue a new charter, referencing the petition, and designating the corporation as a public service district, a public body politic and corporate of the State.

Section 33-36-1330. (A) The existing board of directors and officers shall serve until the expiration of their present terms. Thereafter, and not less than forty-five days prior to any expiration of the term of a board member, the board of directors shall submit to the county legislative delegation the name or names of a person or persons recommended for appointment or reappointment. A letter of recommendation by the board stating why the name or names are recommended shall accompany the submission. The county legislative delegation shall consider the recommendation of the board but are not limited to make a selection for its own recommendation from among those submitted. Upon recommendation of the county legislative delegation, members of the board must be appointed by the Governor for a term of four years. A vacancy may be filled by the board, if the remaining term is less than two years; if more than two years, then in the usual manner for the unexpired term.

(B) The governing body of the district, by a resolution adopted by a two-thirds vote of all members of the governing body, may request that board members be elected in a nonpartisan general election. If adopted, a certified copy of the resolution and a map clearly setting out the lines of the boundaries of the district in the county or counties in which the district is situated must be presented to the county election commission prior to August first of a general election held in an even-numbered year for the election to be held at the general election in November of that year. The governing body must be elected from single-member election districts.

(C) Notice of the election must be published by the governing body of the district at least three times prior to the election, including (i) not less than sixty days prior to the date of the election, (ii) two weeks after the first date of publication, and (iii) a date not more than fifteen and not less than ten days before the date of the election. The notice must appear in a newspaper of general circulation within the district and contain at a minimum the following:

- (1) the full name of the district and its governing body;
- (2) the names, addresses, and telephone numbers of the members of the district's governing body;

- (3) the existing means of appointment of members of the district's governing body;
- (4) a brief description of the governmental services provided by the district;
- (5) a map showing generally the boundaries of the district;
- (6) a list of precincts and polling places in which ballots may be cast; and
- (7) an explanation of the procedure to be followed for election of members of the district's governing body and state.

Section 33-36-1340. (A) On the first Tuesday following the first Monday in November in the year immediately following the year of the resolution, the voters shall elect commissioners for all seats on the district's governing body. Candidates must file a statement of intention of candidacy with the entity charged by law with conducting the election. Except for the initial election of commissioners as provided in subsection (B), all commissioners must be elected on an at-large basis for terms of four years with terms staggered so that a simple majority of the commissioners are elected in the next ensuing general election year, and the remaining commissioners are elected at the next following general election. The terms of office of commissioners whose seats are subject to contest in general election shall expire fourteen days following the general election.

(B) For the initial election of commissioners, all seats are considered vacant. From among the commissioners elected in the initial election, a simple majority thereof shall serve terms which expire fourteen days following the general election held two years after the initial election. Those commissioners entitled to serve the initial four-year terms are those commissioners equal in number to a simple majority of the membership who received the highest number of votes cast in the initial election. The remaining commissioners shall serve terms which expire fourteen days following the general election held the year following the initial election.

(C) The county election commission is charged with conducting and supervising the elections for commissioners in the manner governed by the election laws of this State, *mutatis mutandis*. Vacancies must be filled in the manner provided in Section 7-13-190.

Section 33-36-1350. The board shall annually elect its officers, a chairperson, vice chairperson, and a secretary and treasurer. The latter two offices may be combined.

Section 33-36-1360. (A) The newly converted district has all rights and powers of a public body politic and corporate of this State including, without limitations, all the rights and powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the following rights and powers to:

- (1) have perpetual succession;
- (2) sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person;
- (3) adopt, use, and alter a corporate seal;
- (4) maintain a principal office;
- (5) adopt, change, amend, and repeal bylaws for the management and regulation of its affairs;
- (6) receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;
- (7) purchase, build, construct, maintain, rent, lease, and operate ditches, tunnels, culverts, flumes, conduits, mains, pipes, trunk and collection lines, dykes, dams, reservoirs, water and wastewater treatment facilities, and any adjunct facility or facilities for the impounding, treatment, production, transmission, distribution, operation, service in connection with the sale of water or supply of sewer service;

(8) acquire and operate any type of machinery, appliances, or appurtenances necessary or useful in constructing, operating, and maintaining the system;

(9) enter into contracts of short or long duration;

(10) prescribe rate charges for its services and enact regulations;

(11) make contracts of all kinds and execute all instruments or documents necessary or convenient to carry out the business of the district;

(12) sell, lease, exchange, transfer, or otherwise dispose of or grant option for any purpose with respect to any real or personal property or interest in them in conformity with state law;

(13) acquire by purchase, lease, gift, or otherwise, or obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee in conformity with state law;

(14) incur liabilities, lend and borrow money, issue bonds or notes of the district, secure its obligations by mortgage, and pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the district from the sales of property, insurance, or condemnation awards;

(15) acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and licenses and other rights or interests in them;

(16) authorize the construction, operation, maintenance of any project by any person, firm, or corporation, including political subdivisions and agencies of any state of the United States;

(17) apply to the appropriate agencies of the State, the United States or any state, and to any other proper agency for and obtain from them permits, licenses, certificates, or approvals as may be necessary; and construct, maintain, and rate the project in accordance with such license, permits, certificates, or approvals;

(18) appoint officers, agents, employees, and servants to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they must be bonded for the faithful performance of their duties;

(19) employ engineers, architects, attorneys, appraisers, financial advisors, and other consultants and employers as may be required in the judgment of the district and fix and pay their compensation from funds available to the joint system, if applicable;

(20) engage in the business of supplying water, water distribution, or sewage collection or treatment; and

(21) exercise, in connection with water or sewage disposal business, the power of eminent domain as prescribed in Section 6-13-50(19).

(B) The rates charged for services furnished for the purpose of providing water supply or sewage disposal, or a combination of these services, is not subject to supervision or regulations by any state bureau, board, commission, or like instrumentality or agency of it.

Section 33-36-1370. Districts converted pursuant to this article shall assume all assets, properties, and liabilities of the antecedent nonprofit corporation."

Nonprofit corporation becoming public service district is voting member

SECTION 3. Section 6-25-20(h) of the 1976 Code, as last amended by Act 113 of 1999, is further amended to read:

() 'Member of a joint system' means those municipalities whose governing bodies have agreed (1) to create a joint municipal water system to undertake the impounding, acquisition, treatment, production, transmission, distribution,

service, and sale of water to a municipality which is a member of the system and other municipalities, and persons which are not members when approved by the governing body of each member or (2) to create a joint municipal water system for the purpose of creating a financing pool. A joint municipal water system created for the purpose of creating a financing pool may have as nonvoting members nonprofit corporations created pursuant to Chapter 36 of Title 33; however, a nonprofit corporation which has become a public service district pursuant to Article 8 of Chapter 36 of Title 33 is a voting member."

Time effective

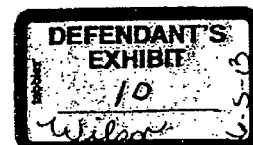
SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 28th day of June, 2001.

Approved the 20th day of July, 2001.

This web page was last updated on Tuesday, December 8, 2009 at 11:31 A.M.

EXHIBIT B



§ 33-36-1360. Rights and powers of district.

South Carolina Statutes

Title 33. Corporations, Partnerships and Associations

**Chapter 36. CORPORATIONS NOT-FOR-PROFIT FINANCED BY FEDERAL OR STATE
LOANS**

Article 8. ELECTION TO BECOME PUBLIC BODY POLITIC AND CORPORATE

Current through 2003 Legislative Session

§ 33-36-1360. Rights and powers of district.

(A) The newly converted district has all rights and powers of a public body politic and corporate of this State including, without limitations, all the rights and powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the following rights and powers to:

- (1) have perpetual succession;
- (2) sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person;
- (3) adopt, use, and alter a corporate seal;
- (4) maintain a principal office;
- (5) adopt, change, amend, and repeal bylaws for the management and regulation of its affairs;
- (6) receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;
- (7) purchase, build, construct, maintain, rent, lease, and operate ditches, tunnels, culverts, flumes, conduits, mains, pipes, trunk and collection lines, dykes, dams, reservoirs, water and wastewater treatment facilities, and any adjunct facility or facilities for the impounding, treatment, production, transmission, distribution, operation, service in connection with the sale of water or supply of sewer service;
- (8) acquire and operate any type of machinery, appliances, or appurtenances necessary or useful in constructing, operating, and maintaining the system;
- (9) enter into contracts of short or long duration;

- (10) prescribe rate charges for its services and enact regulations;
- (11) make contracts of all kinds and execute all instruments or documents necessary or convenient to carry out the business of the district;
- (12) sell, lease, exchange, transfer, or otherwise dispose of or grant option for any purpose with respect to any real or personal property or interest in them in conformity with state law;
- (13) acquire by purchase, lease, gift, or otherwise, or obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee in conformity with state law;
- (14) incur liabilities, lend and borrow money, issue bonds or notes of the district, secure its obligations by mortgage, and pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the district from the sales of property, insurance, or condemnation awards;
- (15) acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and licenses and other rights or interests in them;
- (16) authorize the construction, operation, maintenance of any project by any person, firm, or corporation, including political subdivisions and agencies of any state of the United States;
- (17) apply to the appropriate agencies of the State, the United States or any state, and to any other proper agency for and obtain from them permits, licenses, certificates, or approvals as may be necessary; and construct, maintain, and operate the project in accordance with such license, permits, certificates, or approvals;
- (18) appoint officers, agents, employees, and servants to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they must be bonded for the faithful performance of their duties;
- (19) employ engineers, architects, attorneys, appraisers, financial advisors, and other consultants and employers as may be required in the judgment of the district and fix and pay their compensation from funds available to the joint system, if applicable;
- (20) engage in the business of supplying water, water distribution, or sewage collection or treatment; and
- (21) exercise, in connection with water or sewage disposal business, the power of eminent domain as prescribed in Section 6-13-50(19):

(B) The rates charged for services furnished for the purpose of providing water supply or sewage disposal, or a combination of these services, is not subject to supervision or regulations by any state bureau, board, commission, or like instrumentality or agency of it.

§ 6-25-100. Powers of joint municipal water system.

South Carolina Statutes

Title 6. Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions

Chapter 25. JOINT MUNICIPAL WATER SYSTEMS

Current through 2003 Legislative Session

§ 6-25-100. Powers of joint municipal water system.

Each joint system shall have all the rights and powers of a public body politic and corporate of this State, including, without limitation, all the rights and powers necessary or convenient to carry out and effectuate the provisions of this chapter, including but not limited to, the following rights and powers:

- (a) To have perpetual succession.
- (b) To sue and be sued.
- (c) To adopt, use, and alter a corporate seal.
- (d) To maintain a principal office.
- (e) To make bylaws for the management and regulation of its affairs.
- (f) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.
- (g) To purchase, build, construct, maintain, rent, lease, and operate ditches, tunnels, culverts, flumes, conduits, mains, pipes, dykes, dams, reservoirs, water treatment facilities, and any facility or facilities for the impounding, treatment, production, transmission, distribution, operation, service, and sale of water in connection with the project.
- (h) To acquire and operate any type of machinery, appliances, or appurtenances necessary or useful in constructing, operating, and maintaining the system.
- (i) To enter into contracts of short or long duration for the sale of water to municipalities who are members of the joint system and to other municipalities not members upon conditions as set out under project definitions.

(j) To prescribe rates and regulations under which water shall be sold.

(k) To make contracts of all kinds and to execute all instruments or documents necessary or convenient to carry on the business of the joint system.

(l) To sell, lease, exchange, transfer, or otherwise dispose of or to grant options for any purposes with respect to any real or personal property or interest therein in conformity with state law.

(m) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee in conformity with state law.

(n) To borrow money and issue bonds or notes of the joint system, to loan the proceeds of any borrowing to any member of the joint system to be paid solely from revenues of the system, the loan repayments of members, and such other funds as may be available therefor with a favorable vote of two-thirds of the commissioners. No bonds or notes may be issued the payment for which is dependent upon contracts or agreements with a member except with the approval of the governing body of such member, by resolution or ordinance of the governing body of the member. However, the requirements of this item are satisfied and no further action is required with respect to any bonds or notes issued to finance a project which has been approved by the governing body of the members as provided in Section 6-25-110. The approval of any notes or bonds under this chapter shall include any issuance in one or more series and any refunding or refinancing of them so that only the original issuance of the debt must be approved. The members of a joint system may prescribe additional procedures and requirements as they determine appropriate for the issuance of any notes or bonds in the bylaws of any joint system.

(o) To pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the joint system from the sales of property, insurance, or condemnation awards.

(p) To authorize the construction, operation, or maintenance of any project by any person, firm, or corporation, including political subdivisions and agencies of any state of the United States.

(q) To apply to the appropriate agencies of the State, the United States or any state, and to any other proper agency for and to obtain from them permits, licenses, certificates or approvals as may be necessary; and to construct, maintain, and operate the project in accordance with such licenses, permits, certificates, or approvals.

(r) To appoint officers, agents, employees, and servants to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they shall be bonded for the faithful performance of their duties.

(s) To employ engineers, architects, attorneys, appraisers, financial advisors, and other

consultants and employees as may be required in the judgment of the joint system, and to fix and pay their compensation from funds available to the joint system.

(t) To make use of county and state highway rights-of-way in which to lay pipes and lines, in such manner and under such conditions as the appropriate officials in charge of such rights-of-way shall approve.

(u) Any joint system shall possess the power of eminent domain in accordance with Section 5-7-50 and Chapter 9 of Title 28 in order to effectuate the purposes of this chapter and shall exercise such power in accordance with Chapter 9 of Title 28; provided, however, property of corporations organized under Chapter 35 of Title 33 shall not be subject to condemnation by joint municipal water systems created under the provisions of this chapter.

(v) To, prior to, and in connection with acquisition of a project, study, plan, finance, own, operate, and maintain the project and after the acquisition, to study, plan, finance, acquire, construct, reconstruct, improve, enlarge, extend, own, operate, and maintain one or more additional projects.

(w) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any other state owning water facilities or with any political subdivisions or agencies of any other state or with any other joint system created pursuant to this chapter.

(x) To dispose of by negotiated sale or lease, an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any other state owning water facilities or with any political subdivisions or agencies of any other state or with any other joint system created pursuant to this chapter.

(y) To fix, charge, and collect rents, rates, fees, and charges for water and other services, facilities, and commodities sold, furnished, or supplied through any project.

(z) To negotiate and enter into contracts for the purchase, sale, or use of water with any joint system, municipality, or any political subdivisions or agencies or any public or private water utility.

(aa) To acquire and operate any water treatment system or any water distribution system, including the systems of any member if the consent of the member is first obtained and referendum approval is obtained in those instances where required by law.

(bb) To sell water at retail and at wholesale.

Provided, however, that the provisions of (g), (h), (i), (j), (p), (q), (t), (u), (v), (w), (x), (y), (z), (aa), and (bb) do not apply to a joint system organized solely for the purpose of creating a financing pool.

VIA EMAIL

August 25, 2014

The Hon. R. Keith Kelly
25 E. Floyd Baker Blvd.
Gaffney, SC 29340

Re: West Anderson Water District v. City of Anderson, South Carolina
C.A. No. 2012-CP-04-02770, Court of Common Pleas for Anderson County
HSB File No.: 13924.0003

Dear Judge Kelly:

Per your instructions, West Anderson Water District (the "District") submits this letter to supplement the record and the arguments it has previously made.

1. What did the City buy?

The City of Anderson (the "City") did not buy the right to serve certain tracts of real property from Duke Energy Corporation ("Duke"). All the City bought with respect to Michelin North America, Inc. ("Michelin") was an assignment of a contract to provide water for 10 years to the then existing plant ("Michelin I").¹ (Def. Ex. 31).

The City relies heavily on the Asset Sale Agreement (Def. Ex. 27) and the attached "Service Area Map." However, a review of the Asset Sale Agreement shows that the City did not buy a franchise to sell water within an area (*see id.* at 2 (definition of "Contract") and 4 (definition of "Permit")), instead the City bought certain assets as defined in the Background Statement and Exhibit A. With respect to Michelin, the contract to sell water to Michelin I is included as a contract to be purchased by the City in Schedule 5.5. It is also referenced in Schedule 1 to Exhibit A which provides "**Description of Geographic Area of Retail Mains and Pipes**" and "[t]he retail main and pipes are located within the retail service area shown in gray on the attached map and as described below." In the description, there is reference to the "Michelin Plant property." Given this background for the map in the Asset Sale Agreement, the map only shows where the assets purchased by the City are located. It is this same map that was attached to the Second Amendment to the Asset Purchase Agreement (Def. Ex. 26) and that was incorporated into Exhibit D to the Asset Sale and Purchase Agreement ("Agreement") (Pl. Ex. 18).

¹ In 2012, Michelin announced that it was building another plant within the District ("Michelin II").

The Hon. R. Keith Kelly
August 25, 2014
Page 2

The reason for this language and structure is because Duke could not sell and the City could not buy dedicated service area. Pursuant to state statute, the City can only serve outside its city limits if it has a contract with a customer and, if the customer lies within another provider's service area, the consent of the other provider. S.C. Code Ann. §§ 5-7-60 & 5-31-1910.

2. What consent did the District provide?

The City can only serve within the District by contract and with the District's consent. S.C. Code Ann. § 5-7-60. Only one provision of the Agreement expressly treats Michelin and the District's consent for the City to serve within its boundaries ("Michelin Clause"). The Michelin Clause reads:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.²

Margaret Pope, primary author of the Agreement, testified that this provision was added because the parties had become distrustful of each other and suspicious about who would provide service to which customers. In this climate of distrust, she added the Michelin Clause.

On its face, the Michelin Clause is a limited consent and references "industrial facilities" and "customers." It does not include any reference to the property as a whole or to additional or different customers or facilities. The City's construction expands this consent beyond its terms to cover the whole site, regardless of use or customer. This cannot have been the parties' intent, and is directly contrary to the language used and Mrs. Pope's testimony. It would have been easy enough for the parties to specify that the consent related to the Michelin property as a whole. If that were the intent, the Agreement could have simply made reference to the TMS number or a metes and bounds description for the Michelin property and stated that the right to serve customers within this area was being transferred to the City.³

² Pl. Ex. 5 at 2-3.

³ The District argues that this was not done because the District would not have agreed (and did not agree) to such a transfer and such an agreement would be *ultra vires* and void as a matter of South Carolina law.

The Hon. R. Keith Kelly
August 25, 2014
Page 3

3. Michelin II is independent from Michelin I with respect to water service.

The Friday before trial, the City produced the City's separate contracts for service to Michelin I and Michelin II. (Def. Exs. 48 & 49). Michelin I and Michelin II are not served by the same contract, are not served by the same meter, and have meters of different sizes. This evidence confirms that Michelin II is an independent facility for purposes of water service. As such, it not covered by the narrow consent above.

4. Even if the District does not prevail on the issue of contract interpretation, it is still entitled to an order declaring that it may provide potable water to Michelin II.

Although the trial focused on the interpretation of the Agreement, the District also has legal arguments as to why it could not have provided the consent argued by the City. *See, e.g., City of Beaufort v. Beaufort-Jasper County Water & Sewer Auth.*, 325 S.C. 174, 480 S.E.2d 728 (1997). These arguments are fully presented in the District's trial brief. As such, the District is entitled to an order declaring that it may provide water to Michelin II even if the Court agrees with the City's construction of the Agreement.

For all of these reasons and those presented previously, the District believes it is entitled to judgment in its favor. As the Court requested, we attach our top five points for the Court's consideration of this matter as well.

Please let us know if you require any additional information. Thank you for the opportunity to present this letter and your continued time and attention to this matter.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

cc: Frank H. Gibbes, III

SPS/jmb

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE CIRCUIT COURT

West Anderson Water District,
Plaintiff,

Civil Action No. 2012-CP-04-02770

v.

City of Anderson, South Carolina,
Defendant.

KEY POINTS IN FAVOR OF WEST ANDERSON WATER DISTRICT'S ASSERTION THAT IT IS THE ONLY PROPER PROVIDER OF WATER TO MICHELIN II¹

- The Michelin Clause must be narrowly construed and given meaning. The City's construction does neither of those things. If the Agreement means what the City says it means (that that the City acquired this territory as service area regardless of the customer or use), the Agreement would not provide, "[h]owever, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser." (Emphasis added).
- The City bought "retail assets" from Duke, not service area or territories. The only retail asset purchased by the City that pertained directly to Michelin was the contract to serve the then-existing Michelin plant. The attached map shows where that plant was located. It did not and could not create service area for the City. When the map was incorporated into Exhibit D to the Agreement, it still merely reflected the location of the City's acquired assets. Under South Carolina law, the City can only serve outside its boundaries pursuant to contract. There is no mechanism by which a City can acquire additional dedicated service area.
- Although the trial testimony focused on contract language and the intent of the parties, there is more than that to this case. As argued in the District's trial brief, the City and the District could not have entered a valid agreement by which the City permanently acquired the right to serve customers within the District. As a matter of law, a contractual provision entered into by a governmental entity that purports to bind its successor bodies or councils is *ultra vires* and invalid if it relates to the entity's governmental function.

¹ All shortened references in this document have the same meanings as those applied in the attached letter to the Court.

- The prohibition on binding future governing bodies with respect to governmental functions applies unless the General Assembly adopts enabling legislation that “clearly authorize[s] a contract **regarding a governmental function** for a term beyond the terms of the members of the local governing body.” *Piedmont Pub. Serv. Dist. v. Cowart*, 324 S.C. 239, 242, 478 S.E.2d 836, 838 (1996) (emphasis added). As discussed in the District’s trial brief, there is no such legislation applicable here.
- In the event the District prevails, the City has not shown it is entitled to any damages as a result of negligent misrepresentation, nor has it shown the District would be unjustly enriched. Moreover, it has not shown any damage in the form of additional expense relating to Michelin II. All of the expenses claimed were incurred as a result of membership in the Joint System and not as a result of any anticipated new plant on the Michelin property.

Respectfully Submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill, SC Bar No. 68337
 Boyd B. Nicholson, Jr., SC Bar No. 65387
 HAYNSWORTH SINKLER BOYD, P.A.
 ONE North Main, 2nd Floor
 Greenville, SC 29601-2772
 Telephone: 864.240.3200
 Facsimile: 864.240.3300

Attorneys for Plaintiff
 West Anderson Water District

August 25, 2013
 Greenville, SC

Frank H. Gibbes, III
fgibbes@gibbesburton.com



August 25, 2014
By Email Only

The Honorable R. Keith Kelly
25 E. Floyd Baker Blvd.
Gaffney, SC 29340

Re: West Anderson Water District v. City of Anderson, South Carolina
C.A. No. 2012-CP-04-02770

Dear Judge Kelly:

In accord with your request that each party submit five "bullet points" that support the party's position in this action, we are enclosing the City of Anderson's List of Critical Evidence Entitling the City to Prevail. In this document we set out five (5) primary reasons why we respectfully ask the Court to rule in the City's favor in this matter.

You also invited the parties to submit a three page letter with any post-trial arguments that the party might want the Court to consider. We will be brief.

First, West Anderson (the "District") and the City submitted Pre-Trial Briefs which you have obviously read. In its brief the District restates the arguments that it made when the parties filed cross-motions for summary judgment: (1) the District's Board lacked authority to bind successor boards when it approved the Water Sale and Purchase Agreement in 2002 so the District is no longer bound by the contractual commitments it made twelve (12) years ago and (2) the District's consent to the Michelin Site being included in the City's service area is an invalid and unlawful delegation of the District's governmental authority. The Court previously denied the District's motion for summary judgment on these grounds.

We respectfully submit that this Court should likewise reject both arguments as legally unsound and contrary to the statutory scheme that the Legislature specifically put in place in 2001 to permit water companies to convert to special purpose districts so they could participate as voting members in a long term joint water system. The statutory scheme and the history behind it are set forth in full in the City's Pre-Trial Brief. The statutes in question specifically empower both special purpose districts and joint water systems to enter into long term contracts to accomplish the purposes of the joint water system. The District's suggestion that the members of the joint water system are now freed from the interlocking contractual commitments they made in 2002 to induce other members to sign the WSPA and to permit the joint water system to go forward is patently unsound and unfair and flies in the face of economic reality (i.e., the joint water system's long term bond debt obligations). To rule as the District suggests would effectively undo and disband the Anderson Regional Joint Water System.

308 East Saint John Street
Spartanburg, South Carolina 29302
Telephone 864.327.5000 • Facsimile 864.327.5001
www.gibbesburton.com

Similarly, for the reasons articulated in the City's Pre-Trial Brief, the Court should reject the District's assertion that it illegally consented to the Michelin Site being included in the City's service area. South Carolina Code of Laws § 5-7-60 expressly authorizes a municipality to provide water service inside a special purpose district's geographical boundaries so long as the district consents which the District did here in § 6.02 of the WSPA. To the extent a court might characterize the District's consent as a delegation of its governmental authority, that delegation was lawful because it was a "minor delegation" that did not "substantially impair" the District's ability to serve its many customers located in the 95% part of the District's service area outside of the Michelin Site.

In its Pre-Trial Brief the District suggests that S.C. Code Ann. § 5-31-1910 prohibits the City from serving the Michelin site. Section 5-31-1910, however, is clearly not applicable since it does not deal with providing service in another water district's designated service area. Moreover, this section does not apply in the context of the 2002 Water Sale and Purchase Agreement which involves agreements made between members of the Joint Water System to facilitate the purchase of the Duke water system and formation of the joint water system. The Joint Authority Water and Sewer Systems Act, S.C. Code Ann. 6-25-10, et. seq., was enacted long after § 5-31-1910 and is the controlling statute here. This Act includes the following in its legislative findings: "[i]t is desirable to facilitate a joint authority water and sewer system in accommodating the desires of its members in projects and financings that affect only those members." §6-25-5(3)).

In its Pre-Trial Brief the District also suggests that S.C. Code Ann. § 5-7-60 prohibits the City from serving the Michelin site. To the contrary, even without the Joint Water Systems Act, ~~§5-7-60 provides specific statutory authority for the City to serve the Michelin Site.~~ This section specifically pertains to a municipality's service of water within another water district's designated service area. This section requires only that the municipality obtain permission to service the area which consent the District gave the City here. In such a case, there is no requirement that the area be contiguous nor is there any limitation on the term of the contract.

Second, at trial, the Court construed the WSPA as being silent as to future expansion to the Site. Therefore, the Court would necessarily have to turn to § 6.02 and the Territorial Map attached as Exhibit D to discern the parties' intent in this scenario. Section 6.02 and the Territorial Map clearly give the City the contractual right to serve the entire Michelin Site - including any future addition - as part of its Service Area. Should the District attempt to serve any future addition located on the Michelin Site, the District would improperly encroach on the City's service area and breach the terms of the WSPA. Should the Court resort to § 6.02 and Exhibit D, the City would, therefore, be contractually entitled to serve Michelin's New Facility.

Third, and finally, the City would respectfully ask the Court to rule in a manner that honors the plain intent of the parties that is amply shown by the overwhelming preponderance of the evidence in the record. In doing so, the City invites the Court to carefully consider the City of Anderson's List of Critical Evidence Entitling the City to Prevail. Simply put, while the WSPA itself may contain an ambiguity, there is nothing ambiguous about the parties' intent when the Court focuses on the testimony that came from witnesses who actually participated in and have personal knowledge of negotiations over the terms of the WSPA.

During the summer and fall of 2001, Mr. McCoy, Beeson-Rosier, and Design South worked on preparation of Territorial Maps that would show the service area each Member would serve. Early drafts of the WSPA included a Territorial Boundaries clause that referenced a Territorial Map. In the Fifth Draft dated December 15, 2001 (DX 19), Ms. Pope added the "Background and Findings" clause but inexplicably deleted the Territorial Boundaries clause and map. When the City demanded that the Territorial Map be reinserted in the WSPA and that Ms. Pope include "wording acknowledging City territory to be respected by water companies ...," the other parties agreed and the WSPA, as signed, included:

Section 6.02. Territorial Boundaries. In order to successfully plan and finance additions to each Purchaser's System, and to avoid future disputes, the parties have agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out the areas each intends to serve. The Territorial Map is attached hereto as Exhibit D.

(Emphasis added). In accord with Steve Wilson's instructions to William McCoy to "carve the Michelin Site out" of the District's boundaries and to include it in the City's service area, the Territorial Map shows just that.

Please let us know if you have any questions.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC



Frank H. Gibbes, III

FHG

Enclosure

cc: Mr. Boyd B. Nicholson, Jr. (by email only – w/encl.)
Ms. Sarah P. Spruill (by email only – w/encl.)
Mr. J. Franklin McClain (by email only – w/encl.)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
West Anderson Water District,	)	
	)	
Plaintiff,	)	CITY OF ANDERSON'S LIST OF
	)	CRITICAL EVIDENCE ENTITLING
v.	)	THE CITY TO PREVAIL
	)	
City of Anderson, South Carolina	)	
	)	C.A. No. 2012-CP-04-02770
Defendant.	)	
	)	

In accord with the Court's request, the Defendant City of Anderson, South Carolina (the "City") submits the following list of five (5) "bullet points" focusing on critical evidence entitling the City to prevail in this action:

1. The parties to the March 21, 2002 Water Sale and Purchase Agreement ("WSPA") (DX 29) never deviated from their intention that the service area that each member would be entitled to serve would be delineated and shown on a territorial map that would be attached to the agreement:

- a. September 2001 – DX 8 & 9: ACWA Co-Project Manager McCoy reports that service area maps are nearing completion.
- b. November-December 15, 2001: All drafts of WSPA prepared by Pope except the 5th Draft dated December 15, 2001 contain a draft of a Territorial Boundaries clause with reference to an attached Territorial Map. (DX 12, 13, 16, 19).
- c. December 17, 2001-January 30, 2002: When the City demands that the Territorial Map be reinserted in the WSPA and that Pope/Hill include "wording acknowledging City territory to be respected by water companies ...," the other parties agreed and the Territorial Boundaries clause with reference to an attached Territorial Map is included in all later drafts of the WSPA. (DX 20-22 & 23-25).
- d. February 20, 2002 – March 21, 2002: The Second Amendment to Asset Purchase Agreement (DX 26) and the Asset Sale Agreement (DX 27) each contain both a narrative description and a graphic description of the City's Retail Service Area that includes the entire

Michelin Site and that is identical to the City's service area shown on the Territorial Map that is referenced in the Territorial Boundaries clause (§ 6.02) in the final WSPA and attached as Exhibit D.

2. The only witness that the West Anderson Water District (the "District") presented who actually reviewed drafts of the WSPA and participated in negotiations concerning its terms with the City was William McCoy. McCoy, Co-Project Manager for the Anderson County Water Association ("ACWA") and later a consultant for the District, corroborated the testimony that the City presented from John Moore, who personally participated in negotiations for the WSPA, and Margaret Pope, who drafted the WSPA. McCoy testified that:

- a. Exhibit D to the WSPA was intended to show the service area that each member was entitled to serve and
- b. Steve Wilson, General Manager for the District, instructed him to "carve the Michelin Site out" of the District's boundaries and to include it in the City's service area on Exhibit D.

3. The City invested substantial money and made long-term contractual commitments to acquire the infrastructure and the water capacity to serve the entire Michelin Site as it existed at the time of the agreement and as it might be developed during the term of the WSPA. The District did neither.

4. District General Manager Wilson may well have believed that the District's consent was limited to Michelin's Existing Facility based on what he called "the rules" or internal discussions among members of the ACWA. There is, however, no proof in the record that that limitation was ever communicated to the City. Wilson admitted that he never informed anyone with the City that the District's consent was limited to Michelin's Existing Facility. Wilson also admitted that he did not review drafts of the WSPA and did not personally participate in negotiations for the WSPA but left those tasks to District Chairman Hopkins. The District did not call either of the ACWA's chief negotiators – Kent Guthrie and Charlie Gibson –

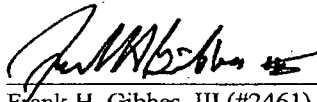
or anyone else with direct personal knowledge of negotiations for the WSPA other than Mr. McCoy to testify.

5. City Manager Moore testified that the City would not have invested substantial money and made long-term contractual commitments to acquire the infrastructure and the water capacity to serve the Michelin Site if, as District General Manager Wilson suggested:

- a. The City would lose that right if the Existing Facility burned down a month after the City purchased Duke's retail water system and Michelin re-built an identical facility in its place or
- b. The City would lose that right if an economic downturn like that in 2008 forced Michelin to close the Existing Facility and some other business began operations at the site or
- c. The City did not have the right to receive additional revenues from future expansions on the Michelin Site which the City could use to defray, among others, the long term obligations the City incurred with the joint water system to acquire allocated water capacity for both Michelin's Existing Facility and anticipated future expansions at the site.

Wilson himself conceded that the City would not be making a wise or common-sense investment if the City purchased Duke's retail water system and committed to the long term obligations set out in the WSPA subject to one or more of the risks described above.

JAG
R3



Frank H. Gibbs, III (#2461)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
fgibbes@gibbesburton.com
(864) 327-5000
(864) 327-5001 (fax)

ATTORNEYS FOR THE DEFENDANT

August 25, 2014
Spartanburg, South Carolina

NOT FOR FILING

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-04-02770

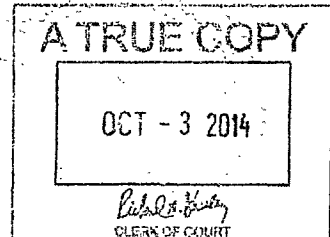
West Anderson Water District,

Plaintiff,

v.

City of Anderson, South Carolina,

Defendant.



PLAINTIFF WEST ANDERSON WATER DISTRICT'S MOTION TO AMEND

Pursuant to Rules 52 and 59, SCRPC, Plaintiff West Anderson Water District (the "District") hereby moves to alter or amend this Court's order filed September 22, 2014. The District received written notice of the entry of the order on September 24, 2014.

As an initial matter, the order must be limited to the issues presented by this case and specifically whether the District or the City of Anderson ("City") has the right to provide potable water to the new Michelin plant located within the District. To the extent the order makes findings as to other providers (Starr-Iva Water and Sewer District ("Starr Iva")) and other sites (Owens-Corning and BASF), those references should be removed.¹ In addition, the order should make it clear that it does not relate to the provision of raw water.

I. Findings of Fact

With respect to the Findings of Fact, several of the numbered paragraphs do not accurately reflect the evidence presented in the trial of this matter. These items are as follow:

- I. Paragraph 4 does not accurately recite the provision at issue from the First Amendment to Asset Purchase Agreement. The clause in question reads:

¹ Starr-Iva has a similar suit pending against the City in federal court and should not be prejudiced by the findings made in this action where it was not a party and did not have the opportunity to present evidence or witnesses.

3.3 Industrial Contracts. The Purchaser hereby waives any objection it may have to the Water Service Agreement, dated July 3, 2000, between the Seller and Michelin North America, Inc. The Seller agrees that, from the date hereof until the Closing or the earlier termination of the Purchase Agreement, it will not enter into any water supply contract with an industrial customer without the prior written consent of the Purchaser (which shall not be unreasonably withheld or delayed), unless the contract includes a provision permitting assignment to the Purchaser upon the Closing and a provision that, upon such assignment, water will be supplied by the Purchaser at the rate or rates Purchaser charges to similarly situated industrial customers.

Thus, the Anderson County Joint Municipal Water System (defined as the "Purchaser"), not the District, was the party to the provision at issue. Moreover, at that time, it was contemplated that the System would buy the entire Duke system, and therefore the provision was contemplated to be temporary in nature. The Court should either omit this paragraph or correct it to reflect the terms of the First Amendment.

2. Paragraphs 9 and 10 include a reference to sites other than Michelin. These sites are the subject of another lawsuit pending in federal court and this order should not make any findings with respect to them.

3. Paragraph 10 does not accurately reflect Def. Ex. 17, a letter dated December 7 referencing an agreement between the parties. That letter refers to the "Michelin plant which is to be located within the West Anderson District," not the entire Michelin site.

4. With respect to Paragraph 11, the Water Sale and Purchase Agreement ("Agreement") should speak for itself. The District asks that the Court quote the Agreement rather than paraphrase it.

5. Similarly, Paragraphs 12 and 13 paraphrase the Second Amendment to Asset Purchase Agreement and the Asset Sale Agreement rather than quoting the documents. The District contends the language here is particularly important as it shows this was a sale of retail assets and not "service area" as suggested by the order. The District asks that the Court reference or quote the agreements without commentary or omit these paragraphs.

6. With respect to Paragraph 14, the District again asks that the order mirror the Agreement. There is no reference to service area in Section 6.02.

7. Paragraph 16a may or may not reflect the testimony at trial. The District cannot be sure until it receives the transcript, and therefore, out of an abundance of caution, the District raises this concern here.

8. The last sentence of Paragraph 17 is not supported by the evidence. The testimony of Jeff Caldwell showed that the expenditures made after the Agreement were made in connection with the City's membership in the Anderson Joint Regional Water System and were not made specifically with respect to serving the property owned by Michelin.

9. The District objects to the use of the term "service area" in Paragraph 18. That term does not appear in Section 6.02 of the Agreement.

II. Conclusions of Law

With respect to the Conclusions of Law, the District hereby incorporates its arguments presented in its summary judgment motion and memoranda and in its pre-trial brief and post-trial submissions to the Court. Based on these arguments, the District contends the evidence was not sufficient to reach the result found by the Court as to either the parties' rights under the Agreement or the ability of the District to consent to allowing the City to serve within its boundaries for thirty years.

The District further seeks to correct any rulings that stem from the factual issues noted above. For example, any mention of other sites and water providers should be excluded. This case is solely about these parties and the ability to provide potable water to the new Michelin plant located within the District.

The trial in this matter focused on the contractual issues presented by the parties. The Court is well aware of those arguments. The District does not intend to recover old ground here, except to argue that the order as written does not discuss the following provision of the Agreement, much less strictly construe it as required by the Agreement or give it any meaning as required by the canons of construction:

It is presently intended by the parties hereto that the City of Anderson will serve (1) two industries, BASF and Owens-Corning, located within the boundaries of Starr-Iva Water and Sewer District; and (2) the industrial facilities of Michelin, which are located within the boundaries of West Anderson Water District. Both Starr-Iva Water and Sewer District and West Anderson Water District consent to the City of Anderson's providing such service to these industries. However, such consent is strictly limited to the provision of service to these named industrial customers and no further provision of service by the City of Anderson shall be made to any customer located within the boundaries of Starr-Iva Water and Sewer District or within West Anderson Water District without the written consent of such Purchaser.

("Michelin Clause") (emphasis added). The District does not and has not ever consented to the City's providing service within its territory, with the limited exception of the Michelin plant existing at the time of the Agreement. The District further seeks to clarify that the Court's ruling is based on contract and not estoppel.

The legal issue that was not discussed directly during the trial of this matter (but was briefed by the parties) is whether the District could provide consent for the City to serve within its boundaries for the thirty-year term of the Agreement. The District argues the answer to that question is no.

As an initial matter, the order fails to recite the general rule that governmental entities cannot enter contracts that bind their successor bodies or councils when those contracts relate to a governmental function of that governmental body. *See, e.g., Cunningham v. Anderson County*, 402 S.C. 434, 741 S.E.2d 545 (Cl. App. 2013); *City of Beaufort v. Beaufort-Jasper County Water & Sewer Auth.*, 325 S.C. 174, 480 S.E.2d 728 (1997); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Cl. App. 1995) ("*Cowart I*"), *aff'd* 324 S.C. 239, 478 S.E.2d 836 (1996) ("*Cowart II*"); *Newman v. McCullough*, 212 S.C. 17, 46 S.E.2d 252 (1948). Nor does the order acknowledge "South Carolina's courts have repeatedly held that a municipality's provision of water service to residents and non-residents is a governmental function." *City of Beaufort* at 179, 480 S.E.2d at 731 at 179; *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Cl. App. 1993). "This rule should hold especially true" for an entity, "which has as its sole function" the provision of water service. *Id.* at 180, 480 S.E.2d at 732. Where the governmental body has "as its sole function" the provision of water service, "public policy surely demands" that such an entity's right to provide water within its own boundaries "be left relatively unimpaired." *Id.* It is undisputed that the Agreement's term necessarily purported to

bind future District boards and that the Michelin Clause and Section 6.02 implicate a governmental function. The record is also clear, and it is not disputed, that the District's board has changed since the time of the Agreement.

Instead, the order finds that consent is authorized pursuant to three code provisions: S.C. Code Ann. §§ 5-7-60, 33-36-1310, and 6-25-5 *et seq.* However, the Court may only consider the District's enabling legislation in determining whether consent is authorized. *Cowart II* at 242, 478 S.E.2d at 838 ("[T]he enabling legislation must clearly authorize a contract regarding a governmental function for a term beyond the terms of the members of the local governing body.") (emphasis in original). The District's enabling legislation is found in S.C. Code Ann. § 33-36-1310. Thus, any reference to Titles 5 or 6 are not applicable to this analysis.

Title 5 describes the powers of the City. The District has argued the City may only serve outside its boundaries as provided by S.C. Code Ann. §§ 5-7-60 and 5-31-1910; however, these arguments relate to the ability of the City to serve, not the power of the District to consent. To the extent the order finds S.C. Code Ann. § 5-7-60 authorizes the District to do anything, such a ruling is in error.

The referenced portion of Title 6 is the Joint Authority Water and Sewer Systems Act. S.C. Code Ann. § 6-25-128 provides that a water system may enter into contracts "concerning the sale or purchase of capacity and output from a project" for up to 50 years. This provision authorizes an authority to enter into an agreement to buy water. It does not make any provision for an authority to enter an agreement that changes its boundaries or its ability to serve customers within those boundaries, much less to enter into an agreement that would bind successor boards on this point. If that were the case, one board could contract away the District's entire territory and any successor board would have no recourse. Nothing about the District's arguments is

inconsistent with this code section. The District is not seeking in any way to dismantle the Joint System or "the right to receive a specified allocated capacity" or the payment provisions, rather it is asserting that the District could not have provided valid consent to allow the City to serve the new Michelin plant that would bind successor boards.

As far as the District's enabling legislation, the order points to S.C. Code Ann. § 33-36-1360(A), and specifically language in subsections (9) and (11) that states that entities like the District may enter into contracts "of short or long duration" and may "make contracts of all kinds and execute all instruments or documents necessary or convenient to carry out the business of the district." This language, however, falls short of "clearly authorizing" a contract "regarding a governmental function" that goes "beyond the terms" of the District's board members as required by *Cowart II*.

In *City of Beaufort*, the enabling legislation conferred powers that were just as broad, if not broader, than those in § 33-36-1360, as follows:

SECTION 4. Powers further.—The Authority shall be fully empowered to acquire, construct, operate, maintain, improve and extend facilities which would enable it to obtain fresh water in large volume, and to distribute and sell the same, subject to the limitations set forth in Section 3, to persons, firms, corporations, municipal corporations, political divisions, and the United States Government, or any agencies thereof, at any point within its Service Area. To that end, the Authority shall have the following powers:

(14) Subject to the provisions of Section 3, to enter into contracts for the sale of water, upon such terms as the parties thereto shall approve, with persons, private corporations, municipal corporations, public bodies, public agencies, and with the United States Government, or any agencies thereof.

(16) To make contracts of all sorts and to execute all instruments necessary or convenient for the carrying on of the business of the Authority.

(25) To do all other acts and things necessary or convenient to carry out any function or power committed or granted to the Authority.

1954 S.C. Acts 784, §§ 4, 4(14), 4(16), and 4(25) (emphasis added). Despite this broad grant of power, the Supreme Court held an entity whose "sole function" was the provision of water service was not authorized to bind future successor bodies by restricting their rights to provide water to residents within Beaufort-Jasper counties. *City of Beaufort* at 180, 480 S.E.2d at 732. Similarly, the Court of Appeals in *Cunningham* found that a statute allowing a county council to "employ [a county manager] for a definite term" was not sufficiently specific to authorize a county council to enter a three-year contract with a county manager. *Cunningham* at 448, 741 S.E.2d at 553 (holding that to satisfy *Covarr II*, the statute must clearly authorize a term extending beyond the terms of the current governing body).

The order attempts to distinguish *City of Beaufort* and *Cunningham* on their facts; however, these distinctions ignore the holding of *Covarr II* that "the enabling legislation must clearly authorize a contract regarding a governmental function for a term beyond the terms of the members of the local governing body." S.C. Code Ann. § 33-36-1360(A) does not provide any such clear indication. In addition, the District's construction of this section does not render these provisions meaningless as the District can enter contracts for non-governmental functions for a short or long duration.

The order further provides that the delegation does not "substantially compromise" the District's authority because only one tract is in dispute. It is true that *City of Beaufort* recognizes an exception to this general rule where the "central, primary function" of a district is not "substantially compromised." *City of Beaufort*, 325 S.C. at 180 n.4, 480 S.E.2d at 732 n. 4. However, the order fails to acknowledge the fact that the right to serve within its territory is the District's "central, primary function" and the District cannot alienate that right in such a way as

to bind successor boards. The ruling in the order would completely impair the District's ability to perform its "central, primary function."

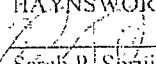
With regard to the impact necessary to constitute a "substantial compromise," *G. Curtis Martin Invest. Trust v. Clay*, 274 S.C. 608, 266 S.E.2d 82 (1980), is instructive. There, the offending provision only related to a subdivision's treatment system that was not yet connected to the District's main system. Indeed, the offending provision there did not prevent service completely but only prevented it by tie-in to a particular plant; and even that restriction expired by its terms once the subdivision system was connected to the District's other system components. *Clay* at 610, 266 S.E.2d at 83-84. Nevertheless, that temporary restriction limited to just a small fraction of the District's territory was held invalid. Here, the order requires a greater compromise of the District's sole governmental function in the form of a complete transfer of the ability to serve a portion of the District for at least thirty years. Accordingly, the language from *City of Beaufort* suggesting an exception for minor delegations of power is inapplicable.

CONCLUSION

For all of these above reasons and those presented by the District at the trial and in the District's briefings in this matter, the Court should reconsider its earlier rulings and amend its order. Based on these arguments, the District contends it is entitled to have judgment entered in its favor as to its claim for declaratory judgment. At the very least, however, the order should be amended to reflect the issues and evidence in this case as discussed above.

Respectfully submitted.

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill, SC Bar No. 68337
Boyd B. Nicholson, Jr., SC Bar No. 65387
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main, 2nd Floor
Greenville, SC 29601-2772
Telephone: 864.240.3200
Facsimile: 864.240.3300

Attorneys for Plaintiff
West Anderson Water District

October 2, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-04-02770

West Anderson Water District,)

Plaintiff,)

v.)

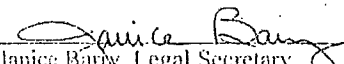
City of Anderson, South Carolina.)

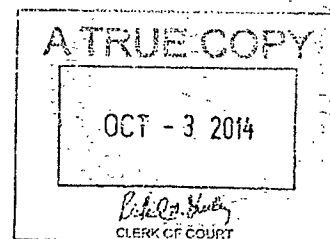
Defendant.)

CERTIFICATE OF SERVICE

This is to certify that the foregoing Plaintiff West Anderson Water District's Motion to Amend was served upon all counsel of record on this the 2nd day of October, 2014, via electronic mail and U.S. Mail, postage prepaid, addressed as follows:

Frank H. Gibbs, III, Esquire
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302


Janice Barby, Legal Secretary
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602-2048
864.240.3223



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
West Anderson Water District,	)	
	)	
Plaintiff,	)	
	)	CITY OF ANDERSON'S
v.	)	MEMORANDUM OPPOSING
	)	PLAINTIFF'S MOTION TO AMEND
City of Anderson, South Carolina	)	
	)	C.A. No. 2012-CP-04-02770
Defendant.	)	

This action was tried before the Court on August 12-13, 2014. At the conclusion of the trial, the Court asked the parties to submit written post-trial arguments. The parties did so on August 25, 2014. On September 22, 2014, the Court filed its Order Including Findings of Fact and Conclusions of Law. In its Order, the Court denied and dismissed the claims asserted by Plaintiff West Anderson Water District ("West Anderson"). The Court granted the claim for declaratory relief brought by Defendant City of Anderson (the "City").

On October 2, 2014, West Anderson served its Motion to Amend in which it asks the Court to alter or amend the Order that the Court filed on September 22, 2014. West Anderson's arguments lack merit. The Court's Order is more than amply supported by evidence in the trial record and by applicable law. As a result the City respectfully submits that the Court should summarily deny West Anderson's Motion without need for further arguments or hearing.

1. Contrary to West Anderson's Assertions, the Court's Findings of Fact Are Amply Supported by Evidence in the Trial Record.

West Anderson makes two fundamental arguments in an attempt to undermine the Court's Findings of Fact. First, West Anderson asserts that any findings concerning or references to the Starr-Iva Water and Sewer District ("Starr-Iva") or to the Owens-Corning and BASF sites must be purged from the Court's Order because there is a "similar suit" pending in

federal court brought by Starr-Iva against the City.¹ West Anderson's argument apparently stems from its concern that this Court's ruling could have some preclusive effect in the parallel federal action. While this may be correct, this is an argument for Starr-Iva to make in the federal action – it does not entitle West Anderson to relief here.

Beyond this, West Anderson's argument is legally and logically flawed. As the trial record shows, facts relating to both Starr-Iva and the Owens-Corning and BASF sites are inextricably interwoven into the events that gave rise to this litigation. The City offered substantial relevant and probative evidence at trial that permitted, if not required, the Court to make factual findings concerning Starr-Iva and the Owens-Corning and BASF sites as well as West Anderson and the Michelin Site. The Court should reject West Anderson's argument to the contrary.

Second, West Anderson erroneously asserts that one or more of the Court's Findings of Fact are not supported by the trial record because the Court has misinterpreted, mischaracterized, or misquoted the documentary evidence introduced at trial.² In making these arguments, West Anderson totally ignores the oral testimony related to the documentary evidence that the City presented at trial. For example, in its objection to Finding of Fact #10, West Anderson focuses solely on the December 7, 2010 letter (DX 17) but totally ignores and fails to address the oral testimony given by City Manager Moore that more than amply supports Finding of Fact #10.

Furthermore, West Anderson ignores and mischaracterizes the plain evidence in the trial record in making a hyper-technical attack on the Court's Findings of Fact #6 and #9. West Anderson objects to the Court's use of the term "service area" in both findings because ¶ 6.02 of

¹ Plaintiff's Motion to Amend ("Motion"), p. 1; §1, ¶2 on p. 2.

² Motion, § 1, ¶¶ 1, 3, 4, 5, 6, 7, and 9.

the WSPA does not use that precise term. In fact, § 6.02 states that the parties to the WSPA “have agreed upon a Territorial Map of the territories of the parties to this Agreement in order to set out *the areas each intends to serve*.” (Emphasis added). Moreover, the trial record is replete with other evidence that the parties intended for the Territorial Map to show each member’s service area: consider, for example, the testimony given by Margaret Pope, the lawyer who drafted the WSPA, and William McCoy, Co-Project Manager for the ACWA and expert witness for the District (Order, Finding of Fact # 16).

In summary, all of the Court’s Findings of Fact are more than amply supported by evidence in the trial record. The Court should, accordingly, reject each of West Anderson’s mistaken and ill-founded attacks on the Court’s Findings of Fact.

2. Contrary to West Anderson’s Assertions, the Court’s Conclusions of Law Are Proper and Supported by Applicable Law.

In that part of its Motion attacking the Court’s Conclusions of Law, West Anderson does no more than restate arguments that it has made and that the Court has rejected on two prior occasions — once on motion for summary judgment and a second time at trial. West Anderson concedes as much in its Motion.³ The Court has in fact carefully and meticulously considered and rejected these legal arguments on two prior occasions. The City respectfully submits that the Court’s prior rulings were correct as a result of which the Court should reject West Anderson’s legal arguments again.

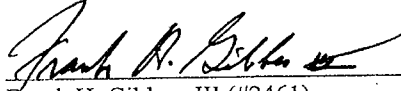
CONCLUSION

The Court’s Order Including Findings of Fact and Conclusions of Law was correctly decided and is well supported by both evidence in the trial record and applicable law. For the

³ Motion, § 2, p. 3.

reasons stated above, the City respectfully asks the Court to deny West Anderson's Motion to Amend in its entirety.

Respectfully Submitted,



Frank H. Gibbs, III (#2461)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
fgibbes@gibbesburton.com
(864) 327-5000
(864) 327-5001 (fax)

ATTORNEYS FOR THE DEFENDANT

October 7, 2014
Spartanburg, South Carolina

IN THE COURT OF
COMMON PLEAS
2012-CP-04-02770

TRANSCRIPT OF RECORD
VOLUME I OF II

B E F O R E:

A P P E A R A N C E S:

FRANK H. GIBBES, III, ESQUIRE
FRANK MCCLAIN, ESQUIRE
ATTORNEYS FOR DEFENDANT

206

1 date.

2 THE COURT: All right.

3 MR. GIBBES: So, we'll withdraw 39.

4 THE COURT: It's withdrawn.

5 MS. SPRUILL: And that takes care of us, Your
6 Honor.

7 MR. GIBBES: Your Honor, the only other thing Ms.
8 Spruill and I talked about before Your Honor came in --
9 and I want to be clear -- us all to be clear on this --
10 my understanding from Ms. Spruill is that West Anderson
11 agrees and consents that the City can serve the old
12 plant, the existing facility, regardless of what
13 happens in this trial?

14 MS. SPRUILL: West Anderson's board continues to
15 consent to the City serving Michelin's existing plant.

16 THE COURT: Okay.

17 MR. GIBBES: So, regardless of how the court rules
18 on whatever issue, our common understanding is that the
19 City is entitled to serve the existing facility?

20 THE COURT: That's what I heard her say.

21 MR. GIBBES: All right. Thank you.

22 MS. SPRUILL: Yes, Your Honor. Thank you.

23 THE COURT: Anything else from anybody?

24 MR. NICHOLSON: Judge, we had some original
25 depositions, can we just leave those here in the court

1 THE COURT: Yes, sir. That's my notes.

2 MR. GIBBES: And we withdrew 39.

3 THE COURT: And withdraw 39 -- 39 was withdrawn if
4 11, 12, and 13 didn't come in is my understanding.

5 MR. GIBBES: Yes, sir.

6 THE COURT: So 39 is gone, too.

7 MR. NICHOLSON: And then other than that, we've
8 all put notebooks up there and we've agreed those are
9 just going to come in.

10 THE COURT: Yes, sir, that's my understanding.

11 MR. NICHOLSON: One other thing, and we've already
12 spoken with Mr. Gibbs about this, we have a supplement
13 -- we have a supplement to Exhibit 17.

14 THE COURT: Sure. By agreement.

15 MR. GIBBES: Your Honor, on behalf of the City, we
16 join with Mr. Nicholson in moving into evidence all the
17 exhibits that have not been -- that the court has not
18 ruled out.

19 THE COURT: Okay.

20 MR. GIBBES: On behalf of --

21 THE COURT: Okay. That's without objection.

22 MS. SPRUILL: Well, subject to our previous
23 objections.

24 THE COURT: Subject to previous objections.

25 MS. SPRUILL: Yes, Your Honor.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 to be sworn in.

2 STEVEN C. WILSON, having been
3 first duly sworn, testified as follows:

4 CLERK: Please state your full name for the
5 record.

6 THE WITNESS: Steve C. Wilson.

7 CLERK: Okay. You may have a seat on the witness
8 stand.

9 DIRECT EXAMINATION BY MR. NICHOLSON:

10 Q. Good morning, Mr. Wilson; how are you?

11 A. Good morning.

12 Q. What do you do, Mr. Wilson?

13 A. I'm a general manager of West Anderson Water
14 District.

15 Q. All right, sir. How long you been doing that?

16 A. Since 1995.

17 Q. Okay. Let's back up just a little bit. Tell
18 the court a little bit about your educational
19 background.

20 A. I went to Brevard Junior College. And then I
21 went to ASI Miami.

22 Q. Okay. And after your -- your education, tell
23 me a little bit about your work history?

24 A. I worked for my father. We had an asphalt
25 company, AC Wilson Asphalt.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Okay. A paving company?

2 A. Yes, sir.

3 Q. All right. What did you do after that?

4 A. I went to work for West Anderson Water
5 District -- or West Anderson Water and Sewer Company.

6 Q. Before it became the district, it was a water
7 company?

8 A. Right.

9 Q. And about what time did you start working for
10 them?

11 A. Eighty-six.

12 Q. All right. And what was your role then?

13 A. I was a manager trainee.

14 Q. Okay. We know you're a general manager now,
15 when did that occur?

16 A. In '95.

17 Q. All right, sir. Tell us a little bit about
18 your duties as the general manager?

19 A. I oversee nine employees, and make sure daily
20 operation of the company is -- stays with the mandates
21 of EPA.

22 Q. Okay. Do you hold any licenses?

23 A. Yes, sir. I hold an A operator license, which
24 is the highest level under LLR in the state. And also
25 a SLED certified CWP, Concealed Weapon Permit

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Instructor.

2 Q. What does LLR license -- what does that mean
3 and allow you to do?

4 A. That allows us to be able to operate a water
5 system.

6 Q. Okay.

7 A. In the State of South Carolina.

8 Q. And you are the designee for the -- for LLR
9 for purposes of holding that license?

10 A. Yes, sir.

11 Q. Okay. We got into it a little bit, West
12 Anderson Water District, what type of entity is the
13 Water District to your knowledge?

14 A. We are a water distribution system -- part of
15 the water system.

16 Q. Okay. You sell -- you sell water?

17 A. We sell water.

18 Q. All right. But you said -- you said before
19 you were a water company?

20 A. That's correct.

21 Q. What type of entity are you now?

22 A. We're a special purpose district.

23 Q. Okay. But go back a little bit before, what
24 was the name of the company?

25 A. Before we became a special purpose district?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Yes, sir.

2 A. It was West Anderson Water and Sewer Company,
3 Inc.

4 Q. Okay. And I'm going to --

5 A. Or Rural Water -- West Anderson Rural Water
6 Sewer Company, Inc.

7 Q. Okay. I'm going to show you -- well,
8 actually, I'm going to keep my exhibits, and I'm going
9 to show you the official -- I'm looking at Plaintiff's
10 Exhibits, Mr. Wilson, and ask you to look at -- open it
11 up to Plaintiff's Exhibit No. 1.

12 A. Yes, sir.

13 Q. That's not the greatest of copies right there,
14 but are those articles of incorporation?

15 A. Yes, sir.

16 Q. And who is that for?

17 A. West Anderson Rural Water and Sewer Company,
18 Inc.

19 Q. Okay. And it looks like the date there is
20 sometime, July 1971?

21 A. That is correct.

22 Q. Does that agree with your memory about when
23 the water company was formed?

24 A. Yes, sir.

25 Q. Okay. If you go to -- flip over to the second

S. WILSON -- DIRECT BY MR. NICHOLSON

1 exhibit.

2 A. Okay.

3 Q. Have you got a document that says
4 "resolution"?

5 A. Yes, sir.

6 Q. Again, it's not the greatest copy in the
7 world. What did this resolution do, if you know?

8 A. It allowed us to be in business --

9 Q. To sell water?

10 A. To sell water.

11 Q. Okay. Did it, in essence, give you a
12 franchise to sell water?

13 A. That is correct.

14 Q. Okay. Flip over, Mr. Wilson, flip over a
15 couple of pages. And at the bottom it says, "WAWD
16 00006"; do you see that?

17 A. Yes, sir.

18 Q. And at the top of the document, it says,
19 "scheduled A legal description", what does this
20 document -- what does this document do that's attached
21 to Exhibit 2, that's a part of Exhibit 2?

22 A. It describes our boundary areas.

23 Q. Okay.

24 A. Our service area.

25 Q. Okay. And that was part of the franchise that

S. WILSON -- DIRECT BY MR. NICHOLSON

1 was created in this resolution?

2 A. Yes, sir.

3 Q. Okay. Is this what West Anderson continues --
4 are these West Anderson's boundaries today?

5 A. Yes, sir.

6 Q. Okay. What type of customers does West
7 Anderson have?

8 A. We have residential, commercial and
9 industrial customers.

10 Q. So you sell water to all types of folks?

11 A. Yes, sir.

12 Q. All right. Now, the documents have a lot of
13 reference in them to an entity called the West Anderson
14 -- or the Anderson County Water Association?

15 A. Yes, sir.

16 Q. Are you familiar with that organization?

17 A. Yes, sir.

18 Q. What -- what is -- or what was that?

19 A. That's where several water companies in
20 Anderson County -- rural water companies got together
21 to purchase Duke's water system.

22 Q. Okay. Okay. But before we do that --

23 MR. NICHOLSON: I'm going to hold this up just to
24 show him.

25 MR. GIBBES: What's the exhibit number?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 MR. NICHOLSON: It's Plaintiff's Exhibit 20.

2 MR. GIBBES: Thank you.

3 MR. NICHOLSON: I'm going to come over --
4 Plaintiff's Exhibit 20.

5 BY MR. NICHOLSON:

6 Q. And, Mr. Wilson, I'm going to come over here
7 so the judge can get a look of what we're talking
8 about. Hopefully, you can see it, too. What does this
9 -- what does this map -- what does this aerial
10 photograph show? In fact, why don't you come down
11 here, Mr. Wilson, for this. I see you squinting over
12 there. Okay. We've got an aerial photograph here.
13 And we've got some green lines right there. What --
14 what do those green -- what does that green line show?

15 A. It shows a boundary.

16 Q. Of West Anderson?

17 A. Yes, sir.

18 Q. Okay. And while we're at it, what does that
19 picture -- what is that picture of that -- those
20 buildings right there?

21 A. That's the Michelin plant.

22 Q. Okay. And is that what we call -- was that
23 the Michelin plant that was built back in the early
24 2000s?

25 A. Yes, sir.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Okay. All right. And let's see, part of the
2 green -- it sort of goes off the grid there -- does it
3 keep running along here or does it keep going around?

4 A. It goes around and hits highway 29 south.

5 Q. Okay. All right. And it comes back up around
6 -- let's see -- you've got the green here -- it goes
7 around -- all right. So it goes -- but in general,
8 this is the West Anderson geographical boundaries?

9 A. Yes.

10 Q. Okay. Go ahead and sit down. Is that within
11 the boundaries that you just looked at?

12 A. Yes, sir.

13 Q. Okay. Back to the Water Association, who --
14 who are the members of the Water Association that you
15 talked about? You don't have to get them all
16 perfectly, but just in general, who made up the Water
17 Association?

18 A. Big Creek, Hammond, Broadway, Sandy Springs,
19 Starr-Iva. Of course, West Anderson, Belton-Honea
20 Path. I think that's it.

21 Q. Okay. But by and large, those were water
22 companies that served -- provided water to residents or
23 commercial or industrial customers outside the City of
24 Anderson?

25 A. Yes, sir.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Okay. Now, it's a four year old water
2 company, now you're a special purpose district?

3 A. Yes, sir.

4 Q. I think you said. What -- what happened to
5 cause you become a special purpose district?

6 A. Us being a private, nonprofit, we could not go
7 into together and own our own association. So in order
8 -- our own treatment facility, together with a group of
9 us --

10 Q. Okay.

11 A. So in order to do that, we had to change over
12 to a private nonprofit to a special purpose district.

13 Q. Okay. And, again, you said -- I think you
14 said earlier that -- that you got together to put in a
15 bid with regard to Duke's facility?

16 A. Yes, sir.

17 Q. Tell us a little bit about that?

18 A. When Duke decided they were going to sale
19 their water systems, they had two systems, one in
20 Rutherford, North Carolina, and then one here in
21 Anderson. We wanted to be a part of our own destiny
22 and own our own water system, so we put in a bid for
23 Duke's system, and actually we won the bid.

24 Q. Okay. And did Duke provide water not only
25 directly to customers, that is a retail system -- did

S. WILSON -- DIRECT BY MR. NICHOLSON

1 they do that?

2 A. Yes, sir.

3 Q. And did they also provide water like to West
4 Anderson?

5 A. Yes, sir.

6 Q. So they sold it wholesale to y'all?

7 A. Wholesale, too, yes, sir.

8 Q. Okay. And so throughout the documents, we're
9 going to see reference to a retail system and a
10 wholesale system?

11 A. Yes, sir.

12 Q. All right. Look, if you would in the
13 Plaintiff's Exhibit book, Mr. Wilson, if you would go
14 to Plaintiff's Exhibit No. 3.

15 A. Okay.

16 Q. It's a document entitled "Articles of
17 Conversion"?

18 A. Yes, sir.

19 Q. And is this what you filed with the Secretary
20 of State to change the status of your entity?

21 A. Yes, sir.

22 Q. Okay. And that -- it says -- item number
23 three there says "conversion to a public service
24 district that was authorized on October 18, 2001"; does
25 that jive with your memory about when it took place?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. Yes, sir.

2 Q. Okay. Now, if you look over the next page.
3 Again, not the greatest of copies. But it's a legal
4 description of geographical boundaries of area?

5 A. Yes, sir.

6 Q. What is this?

7 A. That is our -- our service area.

8 Q. Okay. Flip over very quickly to Exhibit 4,
9 Plaintiff's Exhibit 4.

10 A. Yes, sir.

11 Q. What is this?

12 A. This is our certificate of seal from the
13 Secretary of State for us to be a special purpose
14 district.

15 Q. Okay. Now, Mr. Wilson, if you would, go to
16 Defendant's Exhibit 2.

17 A. Okay.

18 Q. Are you there? What -- are you there, where
19 the document says "Asset Purchase Agreement"?

20 A. Yes, sir.

21 Q. Okay. You said that the -- that the -- the
22 group that you formed with Big Creek and others, that
23 you actually won the bid with Duke?

24 A. Yes, sir.

25 Q. Okay. And that was for the wholesale and

S. WILSON -- DIRECT BY MR. NICHOLSON

1 retail -- it was for the whole system?

2 A. The whole Duke system.

3 Q. Okay. We've got here Defendant's Exhibit 2,
4 Asset Purchase Agreement by and between a bunch of
5 folks and Duke Energy Corporation?

6 A. Yes, sir.

7 Q. Are those folks right there, are those
8 entities -- are those -- are those the entities that we
9 talked about earlier that formed this group to buy this
10 system from Duke?

11 A. Yes, sir.

12 Q. Okay. Flip over for me, Mr. Wilson, to --
13 it's -- I believe it's the first page of -- the actual
14 first page of the agreement, but the number at the
15 bottom hand right is 5000007.

16 A. Correct.

17 Q. You notice there in the middle of that page,
18 or roughly maybe the top one-third or so, there's a
19 little section called -- it says "background
20 statement"?

21 A. Yes, sir.

22 Q. And it has a couple -- it has a couple, three
23 paragraphs that I just want you to look at. Does this
24 background statement summarize sort of where y'all were
25 at the time -- in regards to purchasing this retail

S. WILSON -- DIRECT BY MR. NICHOLSON

1 system from Duke?

2 A. Yes, sir.

3 Q. All right, sir. Now, was -- was the City a
4 part of this agreement at this time?

5 A. No, sir.

6 Q. Okay. Now, that agreement was -- that
7 agreement was dated February 14, 2000; correct? Look
8 on the very first page of the exhibit.

9 A. That is correct.

10 Q. Okay. Let's flip back a little bit to Exhibit
11 1, Defendant's Exhibit 1. The sixth paragraph there,
12 these are -- these are -- these are the meeting minutes
13 from your Board of Directors?

14 A. Yes, sir.

15 Q. This is when you were still with the water
16 company?

17 A. Yes, sir.

18 Q. It says that Rex Hurley -- who was Rex Hurley?

19 A. He was our president of the Board at that
20 time.

21 Q. Okay. It says "Rex Hurley informed the Board
22 that Dukes wants to serve the new Michelin plant. This
23 being a franchise area, the Board feels that West
24 Anderson should be the supplier". What -- what was
25 going on that this statement was put in the meeting

S. WILSON -- DIRECT BY MR. NICHOLSON

1 minutes?

2 A. Duke was wanting to sell Michelin water in our
3 area.

4 Q. Okay. And so -- was the plant there at the
5 time, at that time in 2000?

6 A. I believe that they started construction.

7 Q. Okay. They started construction. It wasn't
8 operational then?

9 A. Right.

10 Q. Okay. And so Duke wanted to sell them water
11 directly, is that right?

12 A. Yes, sir.

13 Q. As a retail customer?

14 A. Yes, sir.

15 Q. Okay. And your company -- your company's
16 reaction was what?

17 A. We were not going to allow it. It was in our
18 area and we needed to serve it, not Duke.

19 Q. Okay. What happened after that?

20 A. The Association -- well, we were going to take
21 litigation against Duke. And the Association asked us
22 not to do that because if we had done that, we would
23 have lost our bid with Duke --

24 Q. Okay.

25 A. The Board agreed not to take litigation

S. WILSON -- DIRECT BY MR. NICHOLSON

1 against Duke since we were going to be purchasing it,
2 and later on if we would receive Michelin back --

3 Q. Okay. Let's go ahead and skip to -- well,
4 just to sort of complete the picture, let's look at --
5 turn to Defendant's Exhibit No. 4. Okay. And the
6 first -- where -- I guess it's the third paragraph that
7 says that Cecil Harbin made the motion to write Duke
8 Water Systems a letter, protesting Duke supplying water
9 to Michelin in our franchise?

10 A. Yes, sir.

11 Q. And did that happen?

12 A. Yes, sir.

13 Q. In fact, if you'll go look to Exhibit 5, is
14 that the letter that was sent?

15 A. Yes, sir.

16 Q. Okay. And in fairness, if you look at Exhibit
17 6, did Duke respond?

18 A. Yes, sir.

19 Q. Okay. And did they agree or disagree with
20 your position?

21 A. Well, they disagreed. They said they were
22 going to service them.

23 Q. Okay. So look at Exhibit 6, is that the
24 letter Mr. Hurley received from a representative of
25 Duke as their lawyer?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. Yes, sir.

2 Q. Okay. Okay. So -- so we had this issue.
3 What did West Anderson -- I think you said it, but just
4 say it again, what did West Anderson decide?

5 A. West Anderson decided it was going to take
6 litigation against Duke.

7 Q. Okay. What ultimately happened though?

8 A. Well, we did not because the association
9 members asked us not to so we would not lose the bid
10 that we put in to buy Duke's system.

11 Q. All right. Mr. Wilson, go to the next
12 exhibit, Defendant's Exhibit 7, and this is a First
13 Amendment to the Asset Purchase Agreement; is that
14 right?

15 A. Yes, sir.

16 Q. And I'm trying to see -- okay. What is the
17 date there? It's up at the top.

18 A. August 2001.

19 Q. Okay. And let's flip over to -- in that
20 exhibit, it's going to be section 3.3, and it's page 4
21 of the agreement. And for the little number on the
22 right -- bottom right hand corner is 500055.

23 A. Yes.

24 Q. Do you see that?

25 A. Yes, sir.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Section 3.3 is entitled "Industrial Contract";
2 do you see that?

3 A. Yes, sir.

4 Q. It says "The purchaser hereby waives any
5 objection they may have to the water service agreement
6 dated July 3, 2000 between the seller and Michelin
7 North America"; is that the agreement that we were
8 talking about or that Duke wanted to serve Michelin
9 company?

10 A. Yes, sir.

11 Q. Okay. It then says that "the seller agrees
12 that from the date hereof, to the closing of the
13 termination of the purchase agreement, it will not
14 enter into any water supply contract with an industrial
15 customer without the prior consent of the purchaser,
16 which shall not be unreasonably withheld or delayed
17 unless the contract includes a provision permitting
18 assignment to the purchaser from the closing, and a
19 provision that upon such assignment water will be
20 supplied to the purchaser at the rate or rates
21 purchaser charges to similarly situated industrial
22 customers"; is that what your understanding of the
23 agreement was going to be?

24 A. Yes, sir.

25 Q. Going forward?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. Yes, sir.

2 Q. Okay. Now, was the City part of this
3 agreement?

4 A. No, sir.

5 Q. Obviously, we're here in the court. Did that
6 change at some point? Did the City become involved?

7 A. Yes, sir.

8 Q. Okay. About -- just roughly, do you have an
9 idea about when the City became actively involved in
10 the deal you were involved with, the purchase of the
11 system from Duke?

12 A. That was around 2002, I think. 2002.

13 Q. 2002. Okay. Let's do this --

14 MR. GIBBES: Judge, just -- we don't object to Mr.
15 Nicholson leading the witness with respect to certain
16 dates -- the dates, so we all know what document he's
17 testifying about, that would help --

18 MR. NICHOLSON: I guess, I'm -- I'm just -- I'm
19 going -- when it gets to something real meaty, I'm
20 going to do my best not to lead, Your Honor.

21 MR. GIBBES: Well, that's what I say, I don't mind
22 you leading and suggesting dates, that would be helpful
23 in expediting.

24 MR. NICHOLSON: Oh, oh, I got you.

25 THE COURT: Just the opposite.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 MR. NICHOLSON: Just the opposite.

2 MR. GIBBES: Just the opposite. Because there are
3 certain dates that we all agree upon, and it's all
4 right for everybody to keep them in mind.

5 THE COURT: All right.

6 MR. NICHOLSON: Thank you, Mr. Gibbes.

7 MR. GIBBES: Now, if you want me to object to
8 leading, I can.

9 MR. NICHOLSON: I suspect that may happen sometime
10 later, but we'll see.

11 BY MR. NICHOLSON:

12 Q. Let's look at -- turn to Exhibit 26, Mr.
13 Wilson.

14 MR. GIBBES: I'm sorry, which one?

15 MR. NICHOLSON: Defendant's Exhibit 26.

16 A. Okay.

17 BY MR. NICHOLSON:

18 Q. Okay. So we've got a -- this is a -- it's a
19 Second Amendment Asset Purchase Agreement. And this is
20 dated February 20, 2002.

21 A. Okay.

22 Q. Is that right?

23 A. Yes, sir, that is correct.

24 Q. Okay. And look at the background statement
25 here. It says -- well, we can all read it -- does this

S. WILSON -- DIRECT BY MR. NICHOLSON

1 background statement that's stated in the Second
2 Amendment to the Asset Purchase Agreement, does this --
3 does this agree with what your memory was of the deal
4 at that time?

5 A. Yes, sir.

6 Q. Okay. And, again, this is dated February of
7 2002. Had there been a fair amount of negotiation up
8 to this point?

9 A. Yes, sir.

10 Q. So maybe the City had gotten involved in the
11 negotiations and the deal maybe a little bit before,
12 2002?

13 A. Yes, sir.

14 Q. Okay. Now, so just -- just to summarize, this
15 statement says that the -- that the Joint Water
16 Association -- and I believe that -- by this this, it
17 had become the Joint Water System; right?

18 A. Yes, sir.

19 Q. It had -- that had been performed pursuant to
20 statute?

21 A. Yes, sir.

22 Q. Okay.

23 MR. NICHOLSON: And, Your Honor, we may call it
24 the Joint System, so -- it's called the Joint System.
25 I think that's what we've been calling it throughout.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 BY MR. NICHOLSON:

2 Q. So, this agreement was between the Joint
3 System and Duke; is that right?

4 A. Yes.

5 Q. Okay. And the City is still not a part of
6 this actual -- was the City a part of this actual
7 agreement here?

8 A. No, sir.

9 Q. Okay. But -- but -- again, to summarize, the
10 Joint System is going to purchase -- they were going to
11 purchase the wholesale system; is that right?

12 A. That's correct.

13 Q. And Duke was going to purchase the retail
14 system?

15 A. Yes.

16 Q. Okay. Look over to page two of the agreement.
17 And the Bates number on the bottom right hand corner is
18 5000171.

19 A. Yes, sir.

20 Q. Okay. As you note there, that the base
21 purchase price has been dropped significantly in
22 section 2.1?

23 A. Yes, sir.

24 Q. That's because you're purchasing the wholesale
25 system only?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. That is correct.

2 Q. Okay. And then section 2.2 states that you're
3 acknowledging that Duke is going to sale -- well, enter
4 into an agreement with the City to convey to the City
5 those assets that are described on Exhibit A; do you
6 see that?

7 A. Yes, sir.

8 Q. Okay. Are those -- it says -- they define
9 that "retail assets"?

10 A. Yes, sir.

11 Q. All right. Just quickly, if you would, Mr.
12 Wilson, go over to Exhibit A, and that is Bates number
13 5000179.

14 A. All right, sir.

15 Q. Okay. And this is -- this is titled "Retail
16 Assets"?

17 A. Yes, sir.

18 Q. Okay. And then the next sentence, "The retail
19 assets consists of the following" -- and there's a
20 litany of items that include what Duke is selling to
21 the City?

22 A. Yes, sir.

23 Q. And if you go over to schedule 1 to Exhibit A,
24 that's on page 5000181.

25 A. Yes.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Schedule 1, Exhibit A, "A description of
2 geographic area of retail mains and pipes", what --
3 what does this description show here?

4 A. It shows the -- the -- the boundaries of the
5 assets.

6 Q. Okay. But it shows where the pipes are?

7 A. Right.

8 Q. Now, while we're on it, the -- the wholesale
9 assets that y'all purchased -- that the Joint System
10 purchased?

11 A. Yes, sir.

12 Q. And the City was a part of the Joint System?

13 A. Right.

14 Q. Right?

15 A. Yes, sir.

16 Q. Okay. The assets that y'all purchased from
17 the wholesale, were there some -- were there some
18 wholesale assets that were located in the city?

19 A. Yes, sir.

20 Q. And some located outside the city?

21 A. Yes.

22 Q. Okay. And on the -- conversely, on the retail
23 assets, there were retail assets within the city?

24 A. Yes, sir.

25 Q. And were there some retail assets outside the

S. WILSON -- DIRECT BY MR. NICHOLSON

1 city?

2 A. Yes, sir.

3 Q. Okay. And go over to schedule 5 to Exhibit A,
4 that's page 5000188.

5 A. All right.

6 Q. Okay. And see item -- and these -- these were
7 certain -- it says certain contracts and arrangements
8 -- and these were contracts that were going to be from
9 Duke, that were basically going to be sold or
10 transferred over to Michelin -- I'm sorry -- to the
11 City; is that your understanding?

12 A. Yes, sir.

13 Q. Okay. And number six says, "Water Service
14 Agreement, dated July 3, 2000, by and between Duke
15 Water Systems and Michelin North America, Inc."; do you
16 see that?

17 A. Yes, sir.

18 Q. And was that to provide water to -- to this
19 plant that was being constructed that we looked at
20 earlier on Plaintiff's Exhibit 20?

21 A. Yes, sir.

22 Q. Okay. Now, we -- we said earlier that -- is
23 the Michelin plant -- just to reiterate -- is the
24 Michelin plant within West Anderson Water District's
25 area, with these geographical boundaries?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. Yes, sir.

2 Q. Okay. Under -- under this agreement -- under
3 the retail agreement right here, it is contemplated
4 that that agreement was going to be sold to the City?

5 A. Yes, sir.

6 Q. Well, what was the District's position about
7 that?

8 A. We didn't like it.

9 Q. Okay.

10 A. In order to make this sale go through, we
11 agreed to let the City serve water at the Michelin
12 facility.

13 Q. Okay. Is that still the position of West
14 Anderson Water District, that -- that even though they
15 may not like it, they consent to the City serving that
16 facility that was built back in 2000, 2001?

17 A. Yes, sir.

18 Q. Okay. All right. Now, let's go to -- go back
19 to the Plaintiff's Exhibit book. Number five --
20 Plaintiff's Exhibit 5.

21 A. Yes, sir.

22 Q. All right. This is a Water Sale and Purchase
23 Agreement?

24 A. Yes, sir.

25 Q. All right. And what -- what does this

S. WILSON -- DIRECT BY MR. NICHOLSON

1 agreement -- is this the agreement that talked about
2 the water allocation? Who was buying what?

3 A. Yes.

4 Q. Okay. And the date of that is March 21, 2002?

5 A. That is correct.

6 Q. Okay. And this is an agreement among the
7 Joint System?

8 A. Correct.

9 Q. And basically all the parties to the Joint
10 System?

11 A. That's right.

12 Q. That includes West Anderson? Is that a yes?

13 A. Yes.

14 Q. That includes the City?

15 A. Yes.

16 Q. Okay. Go to page 2 of that agreement,
17 5000221.

18 A. Yes, sir.

19 Q. Okay. It states that "it is presently
20 intended by the parties hereto, that the City of
21 Anderson will serve (1) two industries, BASF and Owens
22 Corning located within the boundaries of Starr-Iva
23 Water and Sewer District, and (2) the industrial
24 facilities are of Michelin, which are located within
25 the boundaries of West Anderson Water District".

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Again, is this -- when it talks about the Michelin
2 facilities, is this what we've been talking about, what
3 I'm pointing at, in Plaintiff's Exhibit 20?

4 A. Yes, sir.

5 Q. And does this provide West Anderson's consent
6 for the city to serve that plant that was constructed
7 back in the early 2000s?

8 MR. GIBBES: Now, I have to object to that one as
9 leading.

10 MR. NICHOLSON: I'll ask it again.

11 THE COURT: Yes, sir. Rephrase it.

12 MR. NICHOLSON: I'll ask it again.

13 BY MR. NICHOLSON:

14 Q. Did -- what does this clause refer to?

15 A. It was a clause, West Anderson Water District
16 was giving the City permission to serve water to that
17 Michelin facility in our perimeters.

18 Q. Okay. And what Michelin facility was it?

19 A. The only Michelin plant on that property.

20 Q. Okay. At the time?

21 A. At the time.

22 Q. Okay. And, in fact, the next sentence says --
23 well, I'm not going to read -- but it says West
24 Anderson Water District consents to the City providing
25 such services to these industries?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. Yes.

2 Q. Okay. And it goes on, "however, such consent
3 is strictly limited to the provision of service to
4 these named industrial customers, and no further
5 provision of service by the City of Anderson shall be
6 made to any customer located within the boundaries of
7 or within West Anderson's Water District without the
8 written consent of such purchaser".

9 A. Yes, sir.

10 Q. Has the City ever asked you for any further
11 consent to serve any -- to provide any water to West
12 Anderson's area?

13 A. No, sir.

14 Q. But the reason we're here today is about a
15 plant -- a new plant that Michelin started to
16 construct?

17 A. Yes, sir.

18 Q. When -- when did they start constructing that
19 plant -- or when did you find out about that plant?

20 A. Around 2012, I believe it is.

21 Q. And do you agree to the City providing water
22 to that new plant?

23 A. No, sir. That's why we're here.

24 Q. Okay. When did you first find out -- or how
25 did you first find out about that?

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. About the Michelin plant coming in or about
2 the city?

3 Q. Well, let's first talk about the Michelin
4 plant.

5 A. About the new plant?

6 Q. The new plant.

7 A. The new plant -- well, I mean, it was in the
8 paper and on the news.

9 Q. Okay.

10 A. You know, it was coming. And then we got an
11 invite to a meeting, from Anderson County, to meet with
12 the Michelin folks and welcome them to the community.

13 Q. Okay. What did -- what did you talk with the
14 Michelin folks about?

15 A. Their -- their capacity that they were going
16 to be needing at the plant.

17 Q. For the new plant?

18 A. Yes, sir.

19 Q. Did you talk about providing water to the old
20 plant?

21 A. No, sir.

22 Q. Okay. Okay. Did you -- did you ultimately
23 -- did you find out anything about the City providing
24 water to Michelin?

25 A. Yes, sir.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Okay. How did -- when -- when and how did
2 that come about?

3 A. We received a letter from the City, stating
4 that they were going to serve the Michelin plant and we
5 didn't need to serve water there.

6 Q. Okay. Just -- just for purposes of the
7 record, let's look over --

8 (Off-record discussion between attorneys.)

9 Q. Mr. Wilson, look at Defendant's Exhibit 40 --
10 okay. Let me show you Defendant's Exhibit No. 40, is
11 this the letter you were talking about, you got from
12 the City?

13 A. Yes, sir.

14 Q. And they were telling you not to talk to
15 Michelin about providing water?

16 A. That is correct.

17 Q. I'm going to show you Defendant's 41, and did
18 you respond back?

19 A. Yes, sir.

20 Q. And what did you tell them?

21 A. I told them that that was within our
22 boundaries and we were going to serve them their water.

23 Q. And basically this lawsuit started?

24 A. That's right.

25 Q. Okay. Mr. Wilson, go back to -- I skipped

S. WILSON -- DIRECT BY MR. NICHOLSON

1 over it to show -- go back to the Water Purchase
2 Agreement, which is Plaintiff's Exhibit No. 5.

3 A. Okay.

4 Q. And go to article 6, miscellaneous, section
5 6.02, and that's on page 35 of the agreement; and the
6 Bates number is 5000254. Okay. This say "Territorial
7 Boundaries". "In order to successfully plan and
8 finance additions to each purchaser's system, and to
9 avoid future disputes, the parties have agreed upon a
10 territorial map of the territories of the parties to
11 this agreement, in order to set out the areas each
12 intends to serve. The territorial map is attached
13 hereto as Exhibit D." Is that --

14 A. Yes, sir.

15 Q. Is that -- okay.

16 MR. NICHOLSON: Judge, can you see this okay?

17 THE COURT: Yes, sir.

18 BY MR. NICHOLSON:

19 Q. Okay. What I'm showing you, Mr. Wilson, we've
20 marked -- Plaintiff's Exhibit No. 18, and is this -- is
21 this the map that's referenced, that we talked about,
22 in section 6.02?

23 A. Yes, sir.

24 Q. Okay. We've blown this up. I mean, it was
25 attached. It was sort of folded up.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 A. Yes, sir.

2 Q. Okay. But we've blown this up. All right.

3 This yellow area right here, what is that?

4 A. That's West Anderson's area.

5 Q. Okay. And that's what we just also looked on

6 the aerial map as well, aerial photograph?

7 A. Yes, sir.

8 Q. Okay. And what -- what does this little

9 orange spot show that's within the middle or surrounded
10 by the area?

11 A. That's where the Michelin plant is located.

12 Q. Okay. That's where that Michelin plant is
13 located. So, what does this map show?

14 A. Our service area.

15 Q. So West Anderson is yellow?

16 A. Yep.

17 Q. Okay. And it shows -- it's color coded. And
18 Anderson is right above here?

19 A. That's correct.

20 Q. Okay. This area right here, is in your area,
21 the orange area?

22 A. Yes, sir.

23 Q. Is that Anderson's service area?

24 A. No, that's Anderson serving the Michelin plant
25 in our service area.

S. WILSON -- DIRECT BY MR. NICHOLSON

1 Q. Okay. It demonstrates that they are -- that
2 that's where Michelin is?

3 A. That is correct.

4 Q. Okay.

5 MR. GIBBES: I would object to leading again.
6 When he gets on these questions.

7 BY MR. NICHOLSON:

8 Q. This orange area, is that where the Michelin
9 plant is located?

10 A. Yes, sir.

11 Q. Is that where it is located?

12 A. Yes, sir.

13 Q. Okay. Go to exhibit No. 15 -- Plaintiff's
14 Exhibit -- I'm sorry.

15 A. Yes, sir.

16 Q. These are meeting minutes from June 26, 2012?

17 A. Yes, sir.

18 Q. Okay. Do you see right -- about in the
19 middle, there's a -- there's a subject line that says
20 "water service to Michelin"?

21 A. Yes, sir.

22 Q. Okay. It notes that "Steve Wilson explained
23 the matter of boundaries in the dispute with the City
24 of Anderson over the water service to Michelin. Cecil
25 Harbin made the motion to stop the City of Anderson

S. WILSON -- DIRECT BY MR. NICHOLSON

1 from providing water service to any future building
2 sites of Michelin since the sites fall within our
3 boundaries". A second was made with Dwight Edwards,
4 and all concurred?

5 A. Yes.

6 Q. Is that the action the Board took?

7 A. Yes, sir.

8 Q. Okay. Mr. Wilson, I'm going to hand you -- to
9 go Exhibit No. 17, and the parts we have agreed that
10 we're going to supplement that exhibit that I'm handing
11 you right now, what -- what is that document, Mr.
12 Wilson?

13 A. That's a permit from DHEC to supply water to
14 the new Michelin plant.

15 Q. Okay. And so what -- what does that allow you
16 to do?

17 A. To serve them water.

18 Q. Okay. And so if -- if the court were to rule
19 that West Anderson Water District could provide water
20 to the new Michelin plant, are you able to do it?

21 A. Yes, sir.

22 Q. Do you have the capacity to do it?

23 A. Yes, sir.

24 Q. Okay.

25 MR. NICHOLSON: Your Honor, may I have a moment to

S. WILSON -- CROSS BY MR. GIBBES

1 confer with my able counsel?

2 THE COURT: Yes, sir.

3 BY MR. NICHOLSON:

4 Q. Let me show you again the colored map that we
5 have, and show you the area where we said the Michelin
6 plant is located.

7 A. Yes, sir.

8 Q. Right. Before the plant came there, had West
9 Anderson ever provided water to any customers in that
10 location?

11 A. Yes, sir.

12 Q. Okay.

13 A. Yes, sir, we did.

14 Q. Okay. And what type of customers were they?

15 A. Residential customers.

16 Q. Okay.

17 MR. NICHOLSON: That's all I have, Your Honor.

18 And I'll get out of Mr. Gibbs' way.

19 THE COURT: Mr. Gibbs?

20 MR. GIBBES: Yes, sir. May it please the court.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION BY MR. GIBBES:

23 Q. Good morning, Mr. Wilson.

24 A. Good morning, sir.

25 Q. We've met before, have we not?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. All right, sir. And you understand I'm the
3 attorney representing the City in this dispute; is that
4 correct?

5 A. Yes, sir.

6 Q. All right, sir. Mr. Nicholson just asked you
7 a question about Exhibit D to the Water Sale and
8 Purchase Agreement; do you recall him asking you some
9 questions about this?

10 A. Yes, sir.

11 Q. And I believe you said that the area that is
12 shown in yellow constitutes, as you understand it, the
13 West Anderson's service area; is that right?

14 A. Yes.

15 Q. All right. And the area that is shown in
16 orange constitutes, as you understand it, the City's
17 service area; does it not?

18 A. Yes.

19 Q. All right, sir. And Mr. Nicholson asked you
20 if the orange portion, within the yellow portion,
21 showed the Michelin plant. And I believe you told him
22 "yes", is that correct?

23 A. Yes.

24 Q. In fact, the orange portion that is located in
25 the yellow area shows the entire piece of Michelin

S. WILSON -- CROSS BY MR. GIBBES

1 property -- the Michelin site, does it not?

2 A. Yes.

3 Q. It is much larger than just the plant itself?

4 A. Yes.

5 Q. And do you understand Exhibit D, the Water
6 Sale and Purchase Agreement, the orange is intended to
7 show the City's service area, just as the yellow is
8 intended to show West Anderson's service area?

9 A. Yes.

10 Q. Now, Mr. Nicholson asked you if West Anderson
11 -- excuse me -- had ever provided water service to any
12 customers within the Michelin site -- Michelin property
13 prior to all this. And I believe you said on occasion
14 had provided cus -- water service to some residential
15 customers; is that right?

16 A. Yes.

17 Q. All right. But to be clear, West Anderson has
18 never provided water service to Michelin's existing
19 facility, has it?

20 A. No, sir.

21 Q. All right. And, in fact, the water service
22 that was provided to that facility prior to all -- the
23 sale taking place, was provided by Duke under the terms
24 of that Water Sale Agreement that Mr. Nicholson asked
25 you about; is that correct?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes.

2 Q. All right, sir. Now, I believe Mr. Nicholson
3 has covered most of this, but at some point in time
4 Duke announced -- put out the word, that they wanted to
5 sell this water system, is that right, both the
6 wholesale part and the retail part?

7 A. Yes.

8 Q. And the part we're talking about is the
9 Anderson County part, not the Rutherford part up in
10 North Carolina part?

11 A. Well, they wanted to sell that too, but we
12 were just looking at the Anderson property.

13 Q. Excuse me?

14 A. They were going to sell both of them and get
15 out of the water business.

16 Q. Okay. And Duke wanted out of the water
17 business altogether and wanted to sell both, but the
18 part that the City and the water companies and all, all
19 we were interested in was our part down here in
20 Anderson?

21 A. Yes.

22 Q. All right, sir. And I believe you told the
23 court and Mr. Nicholson that the Anderson County Water
24 Association Group put together a bid for the whole
25 system in Anderson County, wholesale and retail; is

S. WILSON -- CROSS BY MR. GIBBES

1 that right?

2 A. Yes.

3 Q. And you told him that you won the bid?

4 A. Yes.

5 Q. And, in fact, the other group that put in an
6 bid for the system was the City; is that right?

7 A. Yes, sir.

8 Q. All right, sir.

9 A. And others.

10 Q. And others. It's a competitive bidding
11 situation of sorts?

12 A. Yes, sir.

13 Q. And Anderson County -- I mean, the Anderson
14 County Water Association bid how much for the whole
15 system?

16 A. Seventy thousand (ph) dollars.

17 Q. And the City bid about what, about \$51 million
18 dollars?

19 A. I'm not exactly sure --

20 Q. It was a lot less than Anderson?

21 A. It was a lot less, yes, sir.

22 Q. Okay, sir. And so as you say, y'all won the
23 bid?

24 A. Yes, sir.

25 Q. All right, right. Now, when the Anderson

S. WILSON -- CROSS BY MR. GIBBES

1 County Water Association was negotiating with Duke
2 about all this -- and I mean buying the whole system,
3 did each water company individually negotiate with
4 Duke, or did y'all have a spokesman for the group?

5 A. We had a spokesman for the group.

6 Q. All right. And who was that?

7 A. I think it was Mr. Charlie Gibson.

8 Q. Charlie Gibson?

9 A. Yes, sir.

10 Q. All right.

11 A. He's with Sandy Springs Water District.

12 Q. I'm sorry.

13 A. Sandy Springs Water Company.

14 Q. And how about Kent Guthrie, did he
15 participate?

16 A. Yes, sir. Kent Guthrie also did too.

17 Q. And what was his role at the time?

18 A. I think he was a manager of a Water
19 Association -- I think he was at the time.

20 Q. And so the negotiations between the Anderson
21 County Water Association and Duke, for the purchase of
22 the system, principally took place through Mr. Gibson
23 and Mr. Guthrie?

24 A. Yes, sir.

25 Q. And then they reported back to people like

S: WILSON -- CROSS BY MR. GIBBES

1 West Anderson?

2 A. Yes, sir.

3 Q. All right. Now, Mr. Nicholson asked you to
4 look at Defendant's Exhibit 2, if you would get that
5 back out, please. Have you found Defendant's Exhibit
6 2, Mr. Wilson?

7 A. I think so. Yes.

8 Q. This is the asset purchase agreement that Mr.
9 Nicholson asked you that was signed up in February of
10 2000; is that right?

11 A. Yes.

12 Q. And this is the one that the water companies
13 were parties to with Duke, where Duke agreed to sale
14 y'all the whole system at this point?

15 A. Yes.

16 Q. Now, do you recall whether you read this
17 agreement back at the time it was negotiated and
18 executed?

19 A. Yes, sir.

20 Q. You did read it?

21 A. Yes, sir.

22 Q. All right. Were you involved in negotiating
23 the agreement?

24 A. No, sir.

25 Q. All right. So negotiations, again, were

S. WILSON -- CROSS BY MR. GIBBES

1 handled by Mr. Guthrie and Mr. Gibson?

2 A. Yes, sir.

3 Q. But at some point you saw the agreement?

4 A. Yes, sir.

5 Q. All right. Now, Mr. Nicholson asked you next
6 about Defendant's Exhibit 7. And Defendant's Exhibit 7
7 is the first amendment to this agreement we just looked
8 at, is that correct?

9 A. Yes, sir.

10 Q. And it's dated August 1st of 2001, is that
11 correct?

12 A. Yes, sir.

13 Q. All right, sir. And two things in here that
14 stand out -- I mean, there is a lot of other stuff, but
15 if you look at paragraph 2.1 a, which is page 500 --
16 I'm just going to use the last few digits, page 53 at
17 the bottom right, the purchase price was reduced by
18 about \$2 million dollars, wasn't it -- was it not?

19 A. Yes, sir.

20 Q. And then as Mr. Nicholson asked you to look at
21 -- if you look at paragraph 3.3 on page 55, it says
22 "purchaser" -- which is all of the water companies, is
23 that right?

24 A. 3.3 on 55?

25 Q. Yes, sir. It says "the purchaser hereby

S. WILSON -- CROSS BY MR. GIBBES

1 waives" --

2 A. Yes, sir.

3 Q. The purchasers are the water companies, is
4 that right?

5 A. Yes, sir.

6 Q. --"any objection to the Water Service
7 Agreement dated July 3, 2000 between the seller and
8 Michelin North America; is that correct?

9 A. Yes, sir.

10 Q. And so you told Mr. Nicholson at this point
11 all of the water companies agreed and consented to Duke
12 having served Michelin up to that point in time?

13 A. Yes, sir.

14 Q. And you waived any objection to that
15 agreement, but you continued well after this point, did
16 you not?

17 A. Well, we waited because we knew we were going
18 to purchase it later on.

19 Q. Well, I want to ask you about that.

20 A. Okay.

21 Q. But at this point in time, as you understand
22 this document which you said you read at the time, West
23 Anderson, among others, waived any objection to that
24 particular agreement where Duke served Michelin, did
25 you not?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. All right, sir. And we can look at -- we'll
3 look at the agreement in a minute -- the Water Service
4 Agreement -- but it ran on for a period long after this
5 initial purchase, did it not?

6 A. Yes, sir.

7 Q. All right. Now, I'm not going to ask you
8 again, but to put things in order, at some point, y'all
9 wrote -- West Anderson wrote Duke and said, we don't
10 think you can serve Michelin; Michelin wrote you back
11 and said, you're wrong, we can serve them, correct?

12 A. Duke wrote us back.

13 Q. Duke wrote you back and said that -- I'm
14 sorry.

15 A. Yes, sir.

16 Q. All right. And then to make the deal go
17 through, West Anderson agreed to withdraw its
18 objection?

19 A. Yes, sir.

20 Q. All right. And when you say "the deal go
21 through", at that point in time it was the deal where
22 y'all were going to buy the whole Duke system, wasn't
23 it?

24 A. That is correct.

25 Q. All right. Now, this business about

S. WILSON -- CROSS BY MR. GIBBES

1 converting to a public service district, you said it
2 better than I can even ask you the question. But when
3 y'all were a -- what was it -- a nonprofit?

4 A. Nonprofit.

5 Q. Water company before?

6 A. Yes, sir.

7 Q. You didn't have the right to own a water
8 treatment facility, did you?

9 A. Well, we didn't have the right to community
10 owned --

11 Q. To join up with other people --

12 A. To join up with other people with -- with a
13 system.

14 Q. And so when this thing with -- the opportunity
15 came along to purchase Duke's system, obviously West
16 Anderson couldn't purchase the whole system itself?

17 A. No, sir.

18 Q. All right, sir. And so everybody came up with
19 the idea of forming this Joint Water System; is that
20 right?

21 A. Yes, sir.

22 Q. All right. And you were aware -- or became
23 aware of the fact that there is a state statute that
24 permits Joint Water Systems to be set up, correct?

25 A. Yes, sir.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. All right. And at or about the time all this
2 happened, there were some amendments to the statutes
3 that said if a water company, like West Anderson,
4 converted to a special purpose district, you could
5 be a joint -- a voting member of your own water system,
6 is that --

7 A. Yes, sir.

8 Q. -- your understanding?

9 A. Yes, sir.

10 Q. All right. And so obviously y'all wanted to
11 convert so you could be a member, and so you would have
12 the right to vote on your Joint Water System matters;
13 is that fair?

14 A. Yes, sir.

15 Q. All right. And, in fact, Mr. Nicholson took
16 you through the documents where y'all did that; is that
17 right?

18 A. Yes, sir.

19 Q. All right. Now, Mr. Nicholson asked you some
20 questions about the -- excuse me, Your Honor --

21 THE COURT: Yes, sir.

22 MR. GIBBES: It's always a good thing to put
23 numbers on the pages. Just give me one minute.

24 THE COURT: Yes, sir.

25

S. WILSON -- CROSS BY MR. GIBBES

1 BY MR. GIBBES:

2 Q. Mr. Wilson, I apologize.

3 A. All right.

4 Q. Now, let me ask you to look at Defendant's 29,
5 which should be in the second book, I believe.

6 A. All right, sir.

7 Q. And I think Mr. Nicholson had asked you to
8 look at their version of this agreement, but I'll tell
9 you this is the same document. It's just the one we
10 marked. But do you recognize this as the Water Sale
11 and Purchase Agreement?

12 A. Yes, sir.

13 Q. All right. Now, I think you told Mr.
14 Nicholson that this was, as you understood it, an
15 agreement among the members of the Joint Water System,
16 and the Joint Water System, that basically set forth
17 the responsibilities of each party, each to the other;
18 is that fair?

19 A. Yes, sir.

20 Q. All right, sir. And it was an important
21 document; was it not?

22 A. Yes, sir.

23 Q. All right, sir. And, in fact, the terms of
24 this agreement were negotiated over a fairly lengthy
25 period of time, were they not?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. All right, sir. Now, at the time, who to your
3 knowledge, drafted this agreement?

4 A. Ms. Margaret Pope.

5 Q. All right. And so Margaret Pope was a -- or
6 is a lawyer; is that correct?

7 A. Yes, sir.

8 Q. And at the time, she was a lawyer with the
9 Haynsworth Sinkler Boyd firm in Greenville; is that
10 right?

11 A. Yes, sir.

12 Q. All right, sir. And the members of the Joint
13 Water System and the Joint Water System hired her and
14 her firm to draft various documents, but she
15 principally was involved in drafting the Water Sale and
16 Purchase Agreement, was she not?

17 A. Yes.

18 Q. All right, sir. And in doing that, she
19 represented all the members; is that correct?

20 A. Yes.

21 Q. Including West Anderson?

22 A. Yes.

23 Q. All right. Now, during the course of these
24 negotiations, West Anderson had its personal lawyers;
25 is that right?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. Was that Mr. Steven Potts?

3 A. Yes.

4 Q. All right. And you are familiar with the fact
5 that other water companies may have had their lawyers?

6 A. Yes, sir.

7 Q. And the City had a lawyer by the name of Jim
8 Brailsford. And, of course, Mr. McClain was
9 representing the City; is that right?

10 A. Yes, sir. I guess so. I don't remember that.
11 I think I remember seeing Mr. McClain --

12 Q. Well, he's old enough to have been there --
13 how about that.

14 A. I'm not going to say that.

15 Q. Well, I get to, you don't. How about that.
16 But the bottom line is this: That the members had
17 their personal lawyers that represented their
18 interests, but collectively you had Margaret Pope who
19 drafted this agreement?

20 A. Yes, sir.

21 Q. All right. Now, under this agreement -- and
22 we can look at the terms of it if we need to -- but let
23 me see if I can ask you a few questions. We can kind
24 of cut through that a little bit. The Joint Water
25 System was going to purchase and own the water

S. WILSON -- CROSS BY MR. GIBBES

1 treatment plant, was that right?

2 A. Yes, and some main water lines.

3 Q. And I was about to say, it would also purchase
4 the water lines that went from the plant out to the
5 various service areas?

6 A. Yes.

7 Q. Generally speaking.

8 A. Yes, sir.

9 Q. And, of course, the Joint Water System had to
10 incur a bond bid to do that, did it not?

11 A. Yes, sir.

12 Q. All right. And then it had to have money to
13 pay back the bond bid?

14 A. Yes.

15 Q. Where did that money come from?

16 A. From each individual entity.

17 Q. All right. And so the members purchased water
18 from the Joint Water System; is that right?

19 A. Yes, sir.

20 Q. And in turn, of course, agreed to pay the
21 Joint Water System for that water?

22 A. Yes, sir.

23 Q. And it was those revenues that the members
24 paid to the Joint Water System that they would use over
25 a period of years to retire the bond debt?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. Okay. And, in fact, I believe it's in here --
3 we can find it if we need to -- there's a place where
4 the members pledged -- actually gave a pledge of their
5 revenues to the Joint Water System so they could get
6 the bonds and so forth?

7 A. Yes, sir.

8 Q. Now, the Water Sale and Purchase Agreement --
9 I mean, this water system was a pretty unique and new
10 thing for everybody up in this area, wasn't it?

11 A. Yes, sir.

12 Q. All right. And the Joint Water System -- the
13 joint -- you understood at the time that y'all made
14 this Water Sale and Purchase Agreement, that it would
15 extend over a long period of time?

16 A. Yes, sir.

17 Q. And in fact, the term of this agreement, as
18 set out in this agreement, is how long?

19 A. I think 30 years.

20 Q. Thirty years with a five year renewal if
21 everybody agrees?

22 A. Yes.

23 Q. All right. And at the time, West Anderson put
24 its signature on this agreement, y'all intended to
25 honor this agreement for the full 30 years; did you

S. WILSON -- CROSS BY MR. GIBBES

1 not?

2 A. Yes, sir.

3 Q. All right. Now, as the members -- well,
4 prospective members, I guess, it would be at that point
5 -- were negotiating the terms of this Water Sale and
6 Purchase Agreement, one of the things that was going on
7 was the preparation of service area maps for each of
8 the entities; is that right?

9 A. Yes, sir.

10 Q. All right. And as negotiations for the
11 agreement began, everybody was concerned about having a
12 map of their service area so everybody would know where
13 each entity was going to serve under this agreement; is
14 that fair?

15 A. Yes, sir.

16 Q. All right. Let me ask you to look at
17 Defendant's Exhibit 8, which is in the other book
18 unfortunately. Have you found that document?

19 A. Yes, sir.

20 Q. All right. Now, this appears to be,
21 Defendant's Exhibit 8, are minutes of the Anderson
22 County Water Association; is that correct?

23 A. Yes, sir.

24 Q. And that's the group you told Mr. Nicholson
25 about, that included West Anderson?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. And these particular minutes are of a meeting
3 that was held on September 11, 2001; is that right?

4 A. Yes, sir.

5 Q. So that would be about a month after y'all had
6 signed up on the 1st amendment to your agreement with
7 Duke?

8 A. Yes, sir.

9 Q. And if you look at those present, it includes
10 yourself, Steve Wilson; does it not?

11 A. Yes, sir, it does.

12 Q. And, in fact, it also includes at the bottom
13 William McCoy, Anderson County Water System; who is Mr.
14 McCoy at this point in time?

15 A. He was an engineer that -- for the
16 Association.

17 Q. All right. Did he also do consulting work for
18 West Anderson at that point in time?

19 A. No, sir.

20 Q. So at this point in time, he was an engineer
21 for the Joint Association?

22 A. Yes, sir.

23 Q. All right. And if you turn to the second page
24 of this document, and look at the very last full
25 paragraph where it says "Mr. McCoy said"...

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. Would you just read that out loud for us?

3 A. "Mr. McCoy said that maps of the companies'
4 service districts are being finalized and will be
5 presented to each company upon completion of your
6 agreement, and for you to send to the Secretary of
7 State for approval."

8 Q. Okay. And so as of September 11, the maps of
9 the water companies service areas are being finished
10 up?

11 A. Yes, sir.

12 Q. And one reason was you had to submit it to the
13 Secretary of State?

14 A. Yes, sir.

15 Q. When you converted to a public -- what do you
16 call it --

17 A. Special purpose district.

18 Q. Special purpose district. All right. Now,
19 let me ask you to look at Defendant's Exhibit 9, the
20 very next exhibit. These are similarly minutes of the
21 Anderson County Water Association, about ten days
22 later, on September 21, 2001; is that right?

23 A. Yes.

24 Q. And they, again, show that Steve Wilson was
25 present on behalf of West Anderson?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes.

2 Q. And they also show Mr. McCoy, the engineer,
3 was there as well?

4 A. Yes.

5 Q. All right. And I'm not going to ask you to
6 read it, but in that last full paragraph, it starts out
7 "Chairman Gibson reported" -- basically what he's
8 reporting to the Anderson County Water Association is
9 that the deal has about been reached, where the City
10 would buy the retail part and the Association would buy
11 the wholesale part; is that right?

12 A. Yes, sir.

13 Q. And he gives the prices at least within what
14 everybody thought they were going to be?

15 A. Yes, sir.

16 Q. And then if you turn to the next page, the
17 first full paragraph reads, "Mr. McCoy said that maps
18 of the companies' district boundaries" -- that would be
19 the water companies -- "and the Duke retail system" --
20 and that would be what the City was to purchase;
21 correct?

22 A. Yes, sir.

23 Q. "Are almost complete and should be ready for
24 the companies in the next few days"; is that right?

25 A. Yes, sir.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. And that's what it says?

2 A. Yes.

3 Q. And is that consistent with your recollection?

4 A. Yes, sir.

5 Q. All right. And so here, shortly after the 1st
6 amendment has been signed and at a time when we all now
7 know the City is going to buy the retail part,
8 everybody is working on maps of the service areas each
9 member will serve for purposes of this deal?

10 A. Yes.

11 Q. All right. Now, let me ask you this: I will
12 tell you that there will be testimony in this case that
13 Ms. Pope, the lawyer for y'all, prepared various drafts
14 of this Water Sale and Purchase Agreement during the
15 late part of 2011 (sic) into the early part of 2002; do
16 you recall ever seeing those drafts yourself?

17 A. No, I think Toddy Hopkins was in on that end
18 of that deal.

19 Q. All right. And so who is Mr. Hopkins at the
20 time?

21 A. He was our president of the Board at the time.

22 Q. All right. Is he in the courtroom today?

23 A. No, sir.

24 Q. Is he -- and I hate to ask this, is he still
25 alive?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir, but he's -- he's got poor health.

2 Q. Well, I'm hesitant to ask those kinds of
3 questions without knowing the answer. But at the time,
4 back in 2001 and '02, he was the -- I'm sorry,
5 president?

6 A. Yes, sir.

7 Q. Of the West Anderson Board?

8 A. Yes, sir.

9 Q. All right. And he was the person who,
10 according to your recollection, would have looked at
11 any drafts of the agreement that might have submitted
12 to West Anderson; is that what you're saying?

13 A. Yes, sir.

14 Q. All right. You don't recall looking at it
15 yourself?

16 A. No, sir, not right off hand I don't.

17 Q. All right. Now, let me ask you this: Do you
18 recall there coming a point in time in late 2001 or
19 early 2002, when the City wanted the territorial map,
20 that became Exhibit D, put back into the Water Sale and
21 Purchase Agreement that was being discussed; is that
22 something you knew about?

23 A. No, sir.

24 Q. Okay. So if there came a point in time when
25 the map was in the agreement, and then not in the

S. WILSON -- CROSS BY MR. GIBBES

1 agreement and put back in, you don't recall anything
2 about that?

3 A. No, sir.

4 Q. All you know is at the end of the day, it
5 ended up being Exhibit D to the agreement?

6 A. Yes, sir.

7 Q. All right. Now, I want to do this -- and your
8 lawyers asked you some questions about it -- excuse me,
9 one minute. I'm not using my John Deere bush hogging
10 -- I've got where I can't -- he's a John Deere fan
11 himself, so...

12 THE COURT: The same here.

13 MR. GIBBES: We have talked about that back and
14 forth. It turns out when I do that sometimes, I can't
15 talk for the next week, which isn't good, but it's fun.
16 I know you agree.

17 BY MR. GIBBES:

18 Q. I want to ask you to turn to Defendant's
19 Exhibit 26.

20 A. All right, sir.

21 Q. Now, Mr. Nicholson asked you a few questions
22 about it, but I want to ask you a little bit more.
23 Defendant's Exhibit 26 is the second amendment to the
24 Asset Purchase Agreement, is that right?

25 A. Yes, sir.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. And the Asset Purchase Agreement, again, is
2 the agreement whereby the Water Association, loosely
3 put, is buying the wholesale assets from Duke?

4 A. Yes, sir.

5 Q. All right. Now, this second amendment is
6 dated February 20, 2002; is it not?

7 A. Yes, sir.

8 Q. All right. Now, if you look at -- and Mr.
9 Nicholson may have asked you to do this -- in paragraph
10 2.2, which is on page 171, this agreement between the
11 water companies and what now has become the Anderson
12 County Joint Water System, makes specific reference to
13 the fact that Duke is going to enter into an Asset Sale
14 Agreement with the City of Anderson to sell them the
15 retail assets, does it not?

16 A. Yes, sir.

17 Q. All right. And so in this agreement, the
18 Joint Water Association, as it existed then, and the
19 water companies, included West Anderson which signed
20 this agreement, are acknowledging that the City is
21 buying that system from Duke under an Asset Sale
22 Agreement; is that right?

23 A. Yes.

24 Q. All right. And, in fact, it shows the price
25 of \$15,580,000; does it not?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. All right. And then if you turn to the
3 section that Mr. Nicholson asked you to turn to, which
4 is Exhibit A on page 179 -- are you there?

5 A. Yes, sir.

6 Q. And Mr. Nicholson asked you a few questions
7 about this, but this is basically a listing of the
8 retail assets that the City is going to purchase from
9 Duke; is that right?

10 A. Yes, sir.

11 Q. And it's acknowledged in this agreement
12 between the water -- the Joint Municipal Water System
13 and West Anderson and others?

14 A. Yes.

15 Q. All right. And then if you turn to schedule
16 1, Mr. Nicholson asked you, I think, what this is. And
17 you said, it shows where the pipes are located; is that
18 correct?

19 A. Now, what are you talking about?

20 Q. I'm sorry. On schedule 1, on page 181 -- I'm
21 sorry. Are you there?

22 A. Yes, sir.

23 Q. All right. This is a long narrative
24 description that goes on for the next -- well, for two
25 pages, is that right?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. All right. And it says, quote, "the retail
3 mains and pipes are located within the retail service
4 area shown in gray on the attached map and as described
5 below"; that's what it says, doesn't it?

6 A. Yes, sir.

7 Q. And the retail service area it refers to is
8 the City's, isn't it?

9 A. Yes, sir.

10 Q. All right. And, in fact, I think when we took
11 your deposition, you acknowledged that this service
12 area boundary description, as far as you can read it,
13 describes the City's retail service area?

14 A. Yes, sir.

15 Q. And, in fact, if you look on the second page
16 -- page 182. The second page of this narrative
17 description -- it's very hard to find it on this, but
18 about midway down, it describes as being included in
19 the City's retail service area, quote "Michelin plant
20 property" end quote, does it not?

21 A. Yes, sir.

22 Q. All right. It doesn't say "plant", does it?
23 It says "property"?

24 A. That's correct.

25 Q. All right. And then it refers on the next

S. WILSON -- CROSS BY MR. GIBBES

1 page, page 183, to an attached map. And if you turn to
2 page 184, there is a map there that is -- it says it's
3 a map to Exhibit A, Asset Sale Agreement -- do you see
4 that in the bottom right corner? In the little block
5 in the bottom right corner, it says "Map to Exhibit A
6 Asset Sale Agreement"?

7 A. Yes, sir.

8 Q. All right. And, in fact, you went back
9 earlier in this second amendment, the Asset Sale
10 Agreement, is the one where the City is buying the
11 retail assets from Duke; right?

12 A. Yes.

13 Q. But that map is included here in your second
14 amendment, correct?

15 A. Yes, sir.

16 Q. All right. And, in fact, this map appears to
17 be on the letterhead of Design South, which is a local
18 engineering firm; is that right?

19 A. Yes, sir.

20 Q. All right. And in the little block to the
21 left of the one that says "map", it describes this as
22 quote, "Service Area Map, Retail Water System, City of
23 Anderson", does it not?

24 A. Yes, sir.

25 Q. And to the best of your knowledge, that's what

S. WILSON -- CROSS BY MR. GIBBES

1 this map shows as shaded in gray; does it not?

2 A. Yes.

3 Q. And, in fact, it's identical to -- as far as
4 the eye can tell -- to what ultimately is shown on
5 Exhibit D to the water sale agreement, as far as the
6 City's retail area?

7 A. Yes, sir.

8 Q. All right. Now, do you have any recollection
9 that West Anderson -- let me ask it different -- do you
10 have any recollection that you, personally, objected to
11 schedule 1 to this agreement, on page 181, which refers
12 to this description as to the retail service area of
13 the city?

14 A. No, sir.

15 Q. Did you ever object to that?

16 A. No, sir.

17 Q. All right. Did you ever object to this map
18 that shows the City's retail service area being put in
19 with this second amendment to your agreement?

20 A. No, sir.

21 Q. All right. To your knowledge, did Mr.
22 Hopkins?

23 A. Not -- I don't know what Mr. Hopkins did.

24 Q. You do know that he signed this agreement?

25 A. He did sign the agreement.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. On behalf of West Anderson?

2 A. Yes, sir.

3 Q. And to the best -- you're not aware of any
4 objection that any of y'all made to these two things
5 being included?

6 A. No, sir.

7 Q. All right. Because y'all wanted to get the
8 deal done, correct?

9 A. Yes, sir.

10 Q. All right. Now, I want to ask you to look at
11 exhibit -- Defendant's Exhibit 27, I believe is the
12 next exhibit. And this is the Asset Sale Agreement
13 between Duke and the City; do you see that?

14 A. Yes, sir.

15 Q. All right. And, in fact, it's dated February
16 20, 2002, the same date that's on the second amendment
17 to your agreement; is that correct?

18 A. Yes, sir.

19 Q. All right. So it would appear, what -- both
20 the second amendment and the Asset Sale Agreement bear
21 the same date, and it would appear they were executed
22 at or about the same time; is that fair?

23 A. Yes.

24 Q. All right. Now, if you look at the Asset Sale
25 Agreement, and you go back to schedule I -- I'll find

S. WILSON -- CROSS BY MR. GIBBES

1 you a page number -- it's page 121 in the bottom right
2 hand corner.

3 A. Okay.

4 Q. Schedule 1, I will represent to you as far as
5 I know, is the same narrative description that is
6 attached to your second amendment -- it would appear to
7 be that; would it not?

8 A. Yes, sir.

9 Q. All right. And, in fact, if you look at the
10 second page of this narrative description on page 122,
11 about midway down it contains the same reference to the
12 Michelin plant property being in the City's retail
13 service area; does it not?

14 A. Yes, sir.

15 Q. All right. And then if you turn on over a
16 couple of pages -- the page numbers are in the upper
17 right corner now, page 436, the same identical map that
18 is here marked as "map to Exhibit A Asset Sale
19 Agreement", the same map that was in the second
20 amendment is put here; is it not?

21 A. Yes.

22 Q. All right. And so for all intent and
23 purposes, both your second amendment to your agreement,
24 and the City's agreement with Duke to buy the retail
25 system, contained the same narrative description of the

S. WILSON -- CROSS BY MR. GIBBES.

1 City's retail service area and the same map showing the
2 retail service area; is that correct?

3 A. Yes.

4 Q. All right. Now, go back to the Water Sale
5 Agreement, which is Defendant's Exhibit 29. And this
6 agreement, I believe you told Mr. Nicholson today, was
7 March 21, 2002; is that right?

8 A. Yes.

9 Q. So it was dated and apparently signed about a
10 month after the other two agreements were just looked
11 at, is that correct?

12 A. Yes.

13 Q. All right. Now, Mr. Nicholson asked you some
14 questions about the language at the bottom of page 221,
15 where there is some -- in the section marked background
16 and findings, there is some language about the City of
17 Anderson will serve -- it says number 2, "the
18 industrial facilities of Michelin, which are located
19 within the boundaries of the West Anderson Water
20 District"; is that right?

21 A. Yes, sir.

22 Q. All right. And at the time this agreement was
23 signed, there was only one Michelin plant in existence;
24 is that correct?

25 A. Yes, sir.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. All right. And then on the next page it says
2 -- again it's on the bottom -- however, such consent is
3 strictly limited to -- to these named industrial
4 customers, and it goes on to say it won't provide any
5 other -- service to any other customer located within
6 West Anderson's boundaries. The named industrial
7 customer referred to, as far as West Anderson is
8 concerned, was Michelin; is that right?

9 A. Yes, sir, that Michelin plant.

10 Q. All right. And Michelin is the same entity
11 that is building this new plant on that Michelin site;
12 is it not?

13 A. Yes, sir. The new -- the new plant is totally
14 different from the plant there.

15 Q. Okay. It's a separate building?

16 A. Yes.

17 Q. Okay. No question. But both the new plant
18 and the existing plant, as y'all call it, are located
19 in this orange area that is shown on Exhibit D in the
20 West Anderson -- in the West Anderson boundaries?

21 A. Yes.

22 Q. All right. And the new plant, of course,
23 wasn't constructed until 2012 or thereabout, is that
24 correct?

25 A. Yes.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. And, in fact, at the time the Water Sale
2 Agreement was signed, there was only one industrial
3 facility of Michelin located out there; wasn't it?

4 A. Yes.

5 Q. Now, I want to ask you a couple of questions
6 -- if you look at the Water Sale Agreement, Defendant's
7 29, at section 2.04?

8 A. What page are you on?

9 Q. I'm going to find it for you. I'm having a
10 little trouble myself. It's on page 231. And section
11 2.04 is at the bottom. Do you see that, Mr. Wilson?

12 A. Yes, sir.

13 Q. All right. Take one minute -- I'm not going
14 to ask you to read it out loud -- take one minute and
15 just read that paragraph to yourself and then I want to
16 ask you a question about it.

17 A. Okay.

18 Q. Now, as you understand this paragraph, the
19 purchaser would include West Anderson, right?

20 A. Yes.

21 Q. All right, sir. And in this paragraph, West
22 Anderson is representing to all the other members -- as
23 they are to you -- that they are loosely put -- validly
24 created entities; is that right?

25 A. Yes, sir.

S. WILSON -- CROSS BY MR. GIBBES

1 Q. And on the second page, West Anderson and the
2 others specifically represent, quote, "that it has all
3 necessary powers and authority to undertake performance
4 obligations under this agreement". And that "it has
5 taken all necessary action to authorize the execution
6 and delivery of this agreement" -- period, end quote.
7 That's what it says, does it not?

8 A. Yes.

9 Q. And, in fact, when West Anderson signed this
10 agreement -- when Mr. Hopkins signed it on behalf of
11 West Anderson, West Anderson fully intended to honor
12 its commitments under this agreement for the full life
13 of the agreement; did it not?

14 A. Yes.

15 Q. And, in fact, your position today is West
16 Anderson still intends to do that; isn't that correct?

17 A. Yes, sir.

18 Q. Now, as long as we're on that -- let me ask
19 you to look at section 2.06 -- it's on page 233. And
20 this is titled Section 2.06, Term of Agreement; is that
21 right?

22 A. Yes, sir.

23 Q. And this is the paragraph that you referred to
24 loosely earlier where it says the agreement will extend
25 until July 15, 2032; is that right?

S. WILSON -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. And basically given when it was executed,
3 that's about a 30 year term, isn't it?

4 A. Yes, sir.

5 Q. All right, sir. And it then goes on to say
6 and quote, "thereafter, absent receipt of notice from
7 any purchaser of its intent not to renew, it shall be
8 automatically extended for a five year period.", end
9 quote; is that right?

10 A. Yes, sir.

11 Q. So when West Anderson and everybody else
12 signed this agreement, they understood they were making
13 a 30 year commitment and perhaps longer?

14 A. Yes, sir.

15 Q. All right. And, in fact, in your mind, that
16 was necessary given the nature of the Joint System, and
17 the need to incur long term bond debt and spread the
18 payment for that debt over a period of time, wasn't it?

19 A. Yes, sir.

20 Q. All right, sir. I mean, it wasn't something
21 you could just sign up and do in one year, was it?

22 A. Right.

23 Q. All right.. Now, I want to ask you to turn to
24 section 6 0 2, which is on page 254 of this agreement
25 -- and I want to ask you to take the time to read this

S. WILSON -- CROSS BY MR. GIBBES

1 out loud, please.

2 A. Okay, 6 0 2?

3 Q. Yes, sir.

4 A. "In order to successfully plan and finance
5 additions to each purchaser's system, and to avoid
6 future disputes, the parties have agreed upon a
7 territory map of the territories of the parties to the
8 agreement, in order to set out the areas each intend to
9 serve. The territory map is attached here as Exhibit
10 D."

11 Q. Now, that paragraph or clause in plain English
12 says that one of the purposes for having the
13 territorial map and the description of the area each
14 member would serve, was so each member could plan --
15 successfully plan and finance additions to their
16 systems; isn't that correct?

17 A. Yes, sir.

18 Q. All right. And so it was important to West
19 Anderson to know that it had a particular service area
20 to serve under this agreement so you could know in what
21 area you might spend money for future additions to
22 serve future customers, wasn't it?

23 A. Yes, sir.

24 Q. All right, sir. And similarly, the City had
25 to know the area it was entitled to serve when it made

S. WILSON -- CROSS BY MR. GIBBES

1 its initial investment in this Joint Water System, and
2 for purposes of planning future service in the areas it
3 was to serve, didn't it?

4 A. Yes, sir.

5 Q. All right, sir. And section 6 0 2 goes on to
6 say, that the parties are agreeing on these service
7 areas -- quote -- "to avoid future disputes" -- end
8 quote; isn't that what it says?

9 A. Yes.

10 Q. And this lawsuit is a future dispute, isn't
11 it?

12 A. Yes, sir.

13 Q. Or it's become one?

14 A. Yes, sir.

15 Q. And the whole purpose of section 6 0 2, as
16 stated in this language in clear terms, was to avoid
17 this lawsuit or something like it, wasn't it?

18 A. Yes, sir.

19 Q. All right, sir. And the way the parties set
20 out to avoid lawsuits like this was to agree upon a
21 territorial map that showed the service area each
22 member was entitled to serve; correct?

23 A. Yes.

24 Q. And the territorial map, which is Exhibit D,
25 in plain English or whatever you want to call it, plain

S. WILSON -- CROSS BY MR. GIBBES

1 graphic description, shows that the City is entitled to
2 serve the Michelin site, the Michelin property; does it
3 not?

4 A. The existing Michelin plant at that time.

5 Q. Show me on Exhibit D that this is limited to
6 the existing facility?

7 A. The only facility there at the time. There is
8 nothing in the contract that says that, any other
9 facilities.

10 Q. Mr. Wilson, my question is this: Exhibit D is
11 the service area for each member; is it not?

12 A. Yes, sir.

13 Q. And it shows, included in the City's service
14 area, is the entire piece of property that we have been
15 calling the Michelin site; does it not?

16 A. Yes, sir.

17 Q. All right, sir. I take it that you would have
18 reviewed this Water Sale and Purchase Agreement before
19 Mr. Hopkins signed it for West Anderson?

20 A. Yes, sir.

21 Q. All right. Did you personally express any
22 objection to the City about section 6 0 2?

23 A. No, sir.

24 Q. To your knowledge, did anybody else from West
25 Anderson express any objection to 6 0 2 being included

S. WILSON -- CROSS BY MR. GIBBES

1 to the City?

2 A. No, sir.

3 Q. All right. Now, in fact, Mr. Hopkins signed
4 this with you and he having full knowledge of section 6
5 0 2 being in the agreement, didn't he?

6 A. Yes, sir.

7 Q. And section 6 0 2 includes the map that is
8 Exhibit D?

9 A. Yes.

10 Q. All right. And y'all -- y'all is a loose
11 term, but West Anderson, y'all, wanted this deal to go
12 through and you basically agreed that the City could
13 serve the Michelin site so that it would go through,
14 didn't you?

15 A. Yes, sir.

16 Q. Now, I'd like to think I'm a half good lawyer,
17 and I have listened to your testimony about what you
18 think this agreement means, and so I want to ask you a
19 little bit more about that. And if I don't use your
20 words, you correct me. But as I've heard what you've
21 told Mr. Nicholson, as you would interpret this
22 agreement, the only thing the City can serve is the old
23 plant, the existing facility; is that correct?

24 A. Yes, sir.

25 Q. All right. And I believe under your

S. WILSON -- CROSS BY MR. GIBBES

1 interpretation or construction of the agreement, if the
2 old plant were to burn down and Michelin were to
3 rebuild the identical plant on the same location, you
4 take the position the City can't serve that rebuilt
5 plant?

6 A. No, sir, I think they could rebuild that.

7 Q. All right. Get me his original deposition,
8 please.

9 MR. GIBBES: Can you have the clerk open -- or
10 somebody open the original?

11 THE COURT: Yes, sir.

12 MR. GIBBES: With everybody's permission, I'm just
13 going to hand him the transcript, not the exhibits.
14 I'll let you keep the exhibits. With the court's
15 permission, I'll hand Mr. Wilson a copy of his original
16 deposition.

17 THE COURT: Yes, sir.

18 BY MR. GIBBES:

19 Q. Mr. Wilson, do you recall that somewhere back,
20 we took your testimony out of court; do you not?

21 A. Yes.

22 Q. All right, sir. And do you recall that we
23 sent your lawyers a -- what's called a 30-b-6 notice,
24 that we basically asked West Anderson to designate
25 somebody to testify on behalf of West Anderson, and you

S. WILSON -- CROSS BY MR. GIBBES

1 were the designee; were you not?

2 A. Yes, sir.

3 Q. All right. And you went -- came to the
4 deposition with your lawyer -- your lawyer was present
5 when you testified?

6 A. Yes, sir.

7 Q. All right. And you recall I asked you some
8 questions?

9 A. Yes, sir.

10 Q. And I know you understood and did your best to
11 tell the truth at the time, did you not?

12 A. Yes, sir.

13 Q. All right, sir. Let me ask you to turn to
14 page 18, and you see the line numbers on the left hand
15 column?

16 A. Yes, sir.

17 Q. On line 15 my question was this: "All right.
18 Let me ask you this: If Michelin tore down the
19 existing plant and rebuilt essentially that same plant
20 on the same site, would the District object to the City
21 serving it?" Read your answer please.

22 A. "Yes, sir."

23 Q. My next question: "So if the old building, the
24 existing plant, the one that was there in 2002, if
25 Michelin for whatever reason decided it was obsolete,

S. WILSON -- CROSS BY MR. GIBBES

1 tore it down, built it back about the same in all
2 material respects, the District would say the City
3 can't serve it; is that correct?"

4 A. "That is correct."

5 Q. Then I asked, "All right. And if Michelin had
6 decided to simply add on to the existing plant, rather
7 than build a separate building, a new facility -- in
8 other words, they just took the new facility and tacked
9 it on to the old building, I take it the District would
10 have objected to us serving the new part of the
11 building?" -- what was your answer?

12 A. Mine was "yes, sir".

13 Q. And then on line 14 I asked: "So, if Michelin
14 had chosen to simply tack on, add on a new facility to
15 the old facility, Michelin would have had to have two
16 different water providers provide water service for
17 those two buildings under your position; is that
18 correct?" What was your answer?

19 A. "That's correct."

20 Q. And then I asked you, "Okay. Supposed
21 Michelin added on some additional warehouse space to
22 the existing facility. And by that, I mean nothing
23 big, just an extra 1,000 square feet, would the
24 District object to the City serving that part of the
25 building?" What was your answer?

S. WILSON -- CROSS BY MR. GIBBES

1 A. "If it's going to use water, yes."

2 Q. And on the top of page 20, "So the bottom line
3 is, it doesn't matter what Michelin does out there, if
4 there is anything beyond what the existing plant was in
5 2002, the District objects to the City serving it?"
6 What was your answer?

7 A. "That is correct. That's what was under the
8 original rules, that the water company board allowed
9 the City to serve water to the existing building -- or
10 the existing plant -- it's the existing building."

11 Q. All right. Thank you. When you say that, that
12 the limitation to the existing building was under -- I
13 believe your words were the original water rules?

14 A. Yes.

15 Q. The original -- I don't want to misquote you
16 -- you say, "that's what was under the original rules",
17 what are you talking about?

18 A. West Anderson agreeing to let the City serve
19 that Michelin facility.

20 Q. All right. And so when you say the original
21 rules, you mean the agreement that you had with the
22 other water companies?

23 A. No, I'm talking about the original water
24 service agreement.

25 Q. Can you sit here in court and swear under

S. WILSON -- CROSS BY MR. GIBBES

1 oath, that you recall any time when anybody went to the
2 City and advised them that the consent West Anderson
3 was giving was limited to the existing facility?

4 A. No, not to my knowledge.

5 Q. Yeah.

6 MR. GIBBES: Your Honor, may I have just a minute?

7 THE COURT: Yes, sir.

8 BY MR. GIBBES:

9 Q. Let me ask you this -- and maybe it's
10 encompassed within the prior questions, but did anyone
11 from West Anderson, to your knowledge, go to the City
12 and advise the City that if the existing Michelin
13 facility burnt down, and they rebuilt it, the City
14 couldn't serve it -- from your point of view?

15 A. No, sir.

16 Q. Now, you are aware that the City paid Duke --
17 I don't know the exact number -- some one to \$2 million
18 dollars -- for the infrastructure to serve the existing
19 Michelin facility; are you not?

20 A. Yes, sir.

21 Q. All right. Would it make sense to you that
22 the City would pay 1 to 2 million dollars for the
23 infrastructure to serve a plant where if the plant
24 burned down a month later, they couldn't serve it? You
25 wouldn't make that deal, would you?

S. WILSON -- CROSS BY MR. GIBBES

1 A. No, sir.

2 Q. No, sir. Now, I want to ask you to look at
3 Defendant's Exhibit 32, please.

4 MS. SPRUILL: Did you say 32?

5 MR. GIBBES: Did I say 32? No, I did, but I
6 didn't mean it. I was just seeing if y'all were awake.
7 Wait just a minute. I have to find out which one I
8 want to look at. I'm sorry, 31. I was close.

9 BY MR. GIBBES:

10 Q. Mr. Wilson, I will tell you Defendant's
11 Exhibit 31 is the assignment and assumption agreement
12 that -- whereby Duke assigned the water service
13 agreement they had with Michelin to the City back in
14 April of 2002; do you see that at the top of the page?

15 A. Yes, sir.

16 Q. All right, sir. And then if you turn over
17 about three pages -- well, a few more -- eventually on
18 page 289, you'll come to the actual water service
19 agreement; do you see that?

20 A. Yes.

21 Q. All right, sir. Now, this is dated July 3rd
22 of 2000; is that right?

23 A. Yes, sir.

24 Q. And it's the water agreement between --
25 whereby Duke served Michelin, and it's the one that --

S. WILSON -- CROSS BY MR. GIBBES

1 in one of those documents West Anderson signed on to,
2 y'all waived any objection to this agreement; is that
3 right?

4 A. Yes.

5 Q. All right. And if you turn over to page 291
6 -- I'm sorry. Go back to page 290. I got ahead of
7 myself. Under paragraph 3 a, it says that DWS -- Duke
8 will begin to deliver water -- and be able to do so as
9 of October 1, 2000 and so forth. And then if you turn
10 to the next page, paragraph C, it says "MNA", Michelin,
11 agrees to purchase its water leads from Duke; do you
12 see that?

13 A. Yes, sir.

14 Q. At the time you waived any objection to this
15 agreement, West Anderson did, were you aware that
16 Michelin had agreed to purchase all of its water leads
17 from Duke under this agreement?

18 A. Yes, sir.

19 MR. GIBBES: Thank you. Your Honor, is this a
20 good point to take a short break, and I think I'm done,
21 but I would like a minute to talk to my folks.

22 THE COURT: Yes, sir. Just for everybody's
23 knowledge, I like to run about an hour and 45 minutes
24 or so, and we're right on top on that. So this is a
25 very good time -- I didn't want to interrupt you.

S. WILSON -- REDIRECT BY MR. NICHOLSON

1 A. Yes, sir.

2 Q. Go to page 220 -- I'm sorry -- 211.

3 A. Okay.

4 Q. Do you see on item number 2 there, it says the
5 "The Industrial facilities of Michelin?" About the
6 third line from the bottom?

7 A. Yes, sir.

8 Q. And then there's a comma, and it describes
9 those. And read that little description there?

10 A. "Which are located within the boundaries of
11 West Anderson Water District, both Starr-Iva" --

12 Q. No, that's fine. That's what I wanted you to
13 get, the industrial facilities which are located within
14 the boundaries of West Anderson?

15 A. Yes, sir.

16 Q. Was that provision important to you?

17 A. Yes.

18 Q. Okay. While we're there -- well, also --
19 yeah, while we're there, flip over to the next page and
20 at the bottom it says -- it talks about both Starr-Iva
21 and -- both Starr-Iva and the sewer district, and West
22 Anderson District's consent to the City of Anderson
23 providing such services to these industries -- and we
24 talked about that, right?

25 A. Yes, sir.

S. WILSON -- REDIRECT BY MR. NICHOLSON

1 Q. Okay. The next sentence -- can you read that
2 next sentence for me?

3 A. Wait a minute, I'm trying to find it.

4 Q. It starts at the bottom, it says "however
5 such".

6 A. "However, such consent is strictly limited to
7 the provisions of service to these named industrial
8 customers, and no further provision of service by the
9 City of Anderson shall be made to any customer located
10 within the boundaries of Starr-Iva Water and Sewer
11 District, or within West Anderson Water District
12 without consent of such purchase."

13 Q. Okay. Did you tell the City that they needed
14 -- other than this agreement, did you tell the City
15 that they needed to give you consent to provide for --
16 to provide further service?

17 A. No, sir.

18 Q. Okay. Did you feel like it was in the
19 agreement?

20 A. Yes, sir.

21 Q. Okay. Just while we're there, flip back to
22 Defendant's Exhibit 27.

23 A. Yes, sir.

24 Q. Just to clarify, that's an agreement between
25 Duke and the City?

S. WILSON -- REDIRECT BY MR. NICHOLSON

1 A. Yes, it is.

2 Q. West Anderson is not a part of that?

3 A. No, sir.

4 Q. Okay. And if you remember -- Mr. Gibbs, in
5 this agreement and in the second amendment to the Asset
6 Purchase Agreement, he showed you those narrative
7 descriptions in there?

8 A. Yes, sir.

9 Q. Okay. Just for purposes of -- let's identify
10 them. Let's look at -- on -- where you are, exhibit
11 27, go to Exhibit A --

12 A. What page is that on?

13 Q. I'm trying to find it too. Go to page 121.

14 A. Okay.

15 Q. And that's the one that ran over to 123,
16 right?

17 A. Yes, sir.

18 Q. Okay. And he also had you look at the
19 description in Defendant's Exhibit 26; do you remember
20 that? That's at page 180? Excuse me, 181.

21 A. Where are you at on it? I'm not following.

22 Q. One eighty-one, Defendant's Exhibit 26.

23 A. I don't have 181. I go to 169 and then it
24 goes to 206 -- okay.

25 Q. Defendant's Exhibit 26. I'm sorry if I told

S. WILSON -- REDIRECT BY MR. NICHOLSON

1 you the wrong thing.

2 A. All right, sir.

3 Q. And that's another -- that's another narrative
4 description that Mr. Gibbes talked to you about,
5 correct?

6 A. Yes, sir.

7 Q. Was that narrative description in the Water
8 Asset Purchase Agreement?

9 A. No, sir.

10 MR. GIBBES: I'm sorry, which agreement?

11 MR. NICHOLSON: The Water Asset Purchase
12 Agreement.

13 MS. SPRUILL: I think you mean the Water Sale and
14 Purchase Agreement --

15 MR. NICHOLSON: Yeah, Water Sale and Purchase
16 Agreement. I'm sorry. Defendant's Exhibit 29, Water
17 Sale and Purchase Agreement. Judge, can I have one
18 second?

19 THE COURT: Yes, sir.

20 BY MR. NICHOLSON:

21 Q. Look -- go back to exhibit 26 -- Defendant's
22 Exhibit 26.

23 A. All right, sir.

24 Q. Go to schedule 5. Mr. Wilson, that's on page
25 188 -- are you there?

S. WILSON -- REDIRECT BY MR. NICHOLSON

1 A. One eighty-eight?

2 Q. Yes, sir.

3 A. Yes, sir.

4 Q. And it talks about -- we talked about this in
5 your direct testimony, it lists certain contracts and
6 arrangements?

7 A. Yes, sir.

8 Q. And then number six, Water Service Agreement
9 dated July 2000 between Duke Water System and Michelin
10 North America; do you see that?

11 A. Yes, sir.

12 Q. And Mr. Gibbs showed you that agreement in
13 cross examination; correct?

14 A. Yes.

15 Q. Okay. Did -- what plant was that agreement
16 referencing?

17 A. The Michelin plant --

18 Q. The?

19 A. -- the initial -- the first initial --

20 Q. Okay.

21 A. The first Michelin plant.

22 Q. The one that was built around 2000?

23 A. Exactly. That's correct.

24 Q. Okay. Okay.

25 MR. NICHOLSON: That's all I've got, Your Honor.

W. MCCOY -- DIRECT BY MS. SPRUILL

1 MS. SPRUILL: West And -- West Anderson Water
2 District would next call William McCoy.

3 THE COURT: All right.

4 CLERK: Mr. McCoy, could you please step forward
5 and be sworn in. Please raise your right hand.

6 WILLIAM R. MCCOY, having been
7 first duly sworn, testified as follows:

8 CLERK: Thank you. Please state your full name
9 for the record.

10 THE WITNESS: William R. McCoy.

11 DIRECT EXAMINATION BY MS. SPRUILL:

12 Q. Good morning, Mr. McCoy. You just saw what
13 happens when I try to talk too fast, if I get ahead of
14 myself and ask a question that doesn't make you much
15 sense -- make much sense to you, ask me to ask it
16 again; and I'll try my best.

17 A. Okay.

18 Q. Mr. McCoy, you have just given your name for
19 the record. Can you tell us a little bit about your
20 professional career?

21 A. I graduated from Clemson in Civil Engineering,
22 got my Masters there in Water Resources Engineering. I
23 was in the military service, and was licensed by the
24 State of South Carolina as a civil engineer and a
25 professional land surveyor.

W. MCCOY -- DIRECT BY MS. SPRUILL

1 Q. And are you a professional engineer?

2 A. Yes.

3 Q. And tell me briefly about your work with the
4 West Anderson Water District?

5 A. Our --

6 Q. Over the years.

7 A. Out -- our firm has -- before I was even
8 there, they were engineer of record for West Anderson
9 -- actually since the beginning of the first company
10 and now the District, to design the water lines, tanks,
11 pump stations, things of that nature; and to add water
12 lines, do whatever necessary to meet the regulations of
13 the Department of Health and Environmental Control to
14 be a seller of water.

15 Q. And you, personally, how long have you done
16 work with the West Anderson Water District?

17 A. Since probably 2003, '04, something like that.

18 Q. And can you tell us briefly about your work
19 with the Anderson Regional Joint Water System -- I'm
20 going to call it the Joint Water System after this,
21 just to shorthand it.

22 A. I served as a consultant to them, one of the
23 co-project managers, to handle items that had to be
24 handled, during the sale or purchase of the system from
25 Duke?

W. MCCOY -- DIRECT BY MS. SPRUILL

1 MS. SPRUILL: And, Your Honor, I would like to
2 proffer Mr. McCoy as an expert in -- generally in the
3 field of civil engineering and surveying.

4 THE COURT: Any objection?

5 MR. GIBBES: No objection as long as his expert
6 opinions are within the bounds that have already been
7 disclosed in discovery.

8 MS. SPRUILL: We will try to keep it in bounds,
9 Your Honor.

10 THE COURT: Thank you. All right.

11 BY MS. SPRUILL:

12 Q. Mr. McCoy, as we've just discussed, in your
13 background, you never went to law school, right?

14 A. Never.

15 Q. Not a lawyer, right?

16 A. Not a course.

17 Q. And in your experience as a professional land
18 surveyor and civil engineer, how are the boundaries of
19 water districts defined generally?

20 A. Generally, the features are placed in a
21 written description. And then that is recorded with
22 the Secretary of State. If it's a district -- when
23 these were first counties, they were also there.

24 Q. Okay. And can you look for me -- you've got a
25 white notebook up there with you -- that should be the

W. MCCOY -- DIRECT BY MS. SPRUILL

1 Plaintiff's Exhibits.

2 A. Yes.

3 Q. Can you look for me at the Plaintiff's third
4 exhibit, back there behind number three -- and is that
5 what you mean by the filings with the Secretary of
6 State?

7 A. Yes.

8 Q. Okay. And when you say the description with
9 the Secretary of State, that's what you're talking
10 about is there, at the page number eight and number
11 nine in there?

12 A. Yes.

13 Q. So, if you were looking to define the
14 boundaries of the West Anderson Water District, that's
15 where you would look?

16 A. Yes.

17 Q. Okay. And have you ever reviewed the
18 boundaries of the West Anderson Water District?

19 A. On occasion, I have, yes.

20 Q. I'm going to show you -- we have been looking
21 at this a good bit -- does this appear to be an aerial
22 photograph with part of the boundaries of the West
23 Anderson Water District? I'll let you look up close.
24 I know it's hard to tell --

25 A. Yes.

W. MCCOY -- DIRECT BY MS. SPRUILL

1 Q. Okay. And is -- to your knowledge, what is
2 this right here?

3 A. That's the original Michelin plant.

4 Q. Okay. And is that within the boundaries of
5 the West Anderson Water District?

6 A. Yes.

7 Q. Okay. And is that Michelin plant, is that
8 contiguous in any way with the city limits of the City
9 of Anderson?

10 A. No, No.

11 Q. And to your knowledge, was the West Anderson
12 Water District serving the area where Michelin now sits
13 prior to Michelin being there?

14 A. Yes.

15 Q. And tell us, again, what was your role with
16 respect to -- I'm going to call it the Water Sale and
17 Purchase Agreement, or if I refer to the agreement,
18 that's what I'm talking about, back in 2002:

19 A. Excuse me.

20 Q. Can I bring you a glass of water, sir? I've
21 got one.

22 A. If you don't mind, Thank you.

23 Q. I'm happy to do it. Here you are, Mr. McCoy.

24 A. Thank you.

25 Q. I think you were going to tell us your role

W. MCCOY -- DIRECT BY MS. SPRUILL

1 with respect to that joint water agreement back in
2 2002.

3 A. Serving to facilitate however between Duke and
4 the group, items were going back and forth, the
5 attorneys were involved, however that process could be
6 expedited.

7 Q. And what was your title?

8 A. Co-project manager.

9 Q. And who was the other project manager?

10 A. Kent Guthrie.

11 Q. And in that white notebook you were just
12 looking in, I want you to look at Plaintiff's Exhibit
13 5.

14 A. Yes, ma'am.

15 Q. And are you familiar with that document?

16 A. I remember working with the group on it.

17 Q. Okay. And can you turn for me to page 35 of
18 that document -- I'm talking about the numbers in the
19 middle of the bottom of the page.

20 A. Yes.

21 Q. And you see there that there's a reference to
22 a territorial map that's going to be attached as
23 Exhibit D.

24 A. All right. Say it again, please, ma'am.

25 Q. Yes, sir. It says -- in the last sentence of

W. MCCOY -- DIRECT BY MS. SPRUILL

1 that paragraph 6.02, it says there that there's a
2 territorial map that's attached as Exhibit D; is that
3 -- it's page 35 in Exhibit 5, in paragraph 6.02?

4 A. Yes. I see 6.02.

5 Q. And it makes reference there to a territorial
6 map that's going to be attached to Exhibit D?

7 A. Yes.

8 Q. And to the best of your recollection, is this
9 big map here Exhibit D?

10 A. Yes, ma'am.

11 Q. Okay. And based on your knowledge of various
12 entities involved here, is this map a 100 percent
13 reflect of the boundaries of each of these entities?

14 A. At the scale at which that's drawn, it would
15 be accurate. The size of the area covered reduced down
16 that much, there's a bunch of the places in some of
17 those districts, including West Anderson, where a
18 boundary line might be a 100 or 200 feet long. And at
19 that scale, it's just next to impossible to show
20 something that small.

21 Q. So it doesn't show everything?

22 A. Yes.

23 Q. And I think you already told us, but if you
24 were going back to look exactly what the boundaries of
25 any of these folks were, where would you go?

W. MCCOY -- DIRECT BY MS. SPRUILL

1 A. The ideal place was the Secretary of State's

2 --

3 Q. You wouldn't provide something like this,
4 would you?

5 A. The written description is what you're looking
6 for.

7 Q. Okay. Would you deem that kind of map
8 reliable to determine boundaries of districts?

9 A. To -- to be the district itself, for legal
10 purposes, you would want to get the description to go
11 with it.

12 Q. Okay. So that's not where you would look to
13 determine the boundaries?

14 A. Graphically you might do that, but not -- not
15 for the legal description.

16 Q. And now I want you to look at -- in the black
17 notebook, there are two volumes, and we're looking at
18 Defendant's Exhibit No. 26. And I don't know if it's
19 in the first one or second one.

20 MR. GIBBES: Second one.

21 BY MS. SPRUILL:

22 Q. Thank you, Mr. Gibbs. So it's right at the
23 beginning of the second notebook. And, Mr. McCoy, just
24 to establish for the record, you've been here all
25 morning; correct?

W. MCCOY -- DIRECT BY MS. SPRUILL

1 A. Yes, ma'am.

2 Q. You've already heard us talk some about these
3 documents; correct?

4 A. Yes.

5 Q. And this Defendant's Exhibit 26, is this
6 something you've seen before we started talking about
7 it this morning?

8 A. Yes, ma'am.

9 Q. And can you look for me at section 2.2 on page
10 2 of that agreement.

11 A. Okay.

12 Q. And in that agreement, in that paragraph, what
13 does the -- what is the City of Anderson purchasing?

14 A. In essence, retail assets.

15 Q. Okay. And does it say anything in that
16 paragraph about territory or service area?

17 A. Not that I see.

18 Q. But it does make a reference to an Exhibit A,
19 is that correct?

20 A. Yes.

21 Q. Okay. And if you'll turn for me, to Exhibit A
22 -- that's on page 179 of that same exhibit. It's about
23 half way through -- and 179 is the number on the bottom
24 right on the page.

25 A. Exhibit A?

W. MCCOY -- DIRECT BY MS. SPRUILL

1 Q. Yes, sir. And is that a listing of the retail
2 assets that the City bought from Duke?

3 A. That's the title of the exhibit.

4 Q. Okay. And in little paragraph A, what's the
5 City purchasing there?

6 A. The assets referred to there are the retail
7 mains and the pipes.

8 Q. Okay. And then look down for me, at paragraph
9 F, what is the City purchasing there?

10 A. All of the seller's rights under all the
11 contracts relating exclusively to the retail system.
12 And then it references schedule 5 to include those
13 contracts.

14 Q. Okay. And then you'll see on the next page,
15 page 180, there is a reference to schedule 1, is that
16 correct?

17 A. Yes.

18 Q. And then if you'll turn to the next page, 181,
19 is that schedule 1?

20 A. Yes.

21 Q. And would you read for me -- so there's a
22 subject heading that's a description and geographic
23 area of retail mains and pipes; will you read for me
24 the next sentence after that, just up to the colon?

25 A. "The retail mains and pipes are located within

W. MCCOY -- DIRECT BY MS. SPRUILL

1 the retail service areas shown in gray on the attached
2 map, and as described below."

3 Q. So would it be fair to say that the attached
4 map shows where the retail mains and pipes are located?

5 A. Yes.

6 Q. Thank you. And, Mr. McCoy, when did you learn
7 that Michelin was considering adding a second plant on
8 its property located within West Anderson Water
9 District?

10 A. 2011, '12, somewhere in there.

11 Q. I'm going to show you something. It's not an
12 exhibit, it's just to refresh your recollection on some
13 dates, but if you'll turn in the white notebook to tab
14 16, and I'll -- I don't want you to read out loud from
15 it, I just want you to look at it to straighten out
16 your memory on when this was happening -- actually, I
17 take it back. Don't look at that right now -- no,
18 wait, here we go. Look at the second page of that, on
19 page 29, and see if that refreshes your recollection
20 about when you might have learned they were adding a
21 second plant on the Michelin -- on the property
22 Michelin owned within the West Anderson Water District?

23 A. All right. We're in the white book?

24 Q. We're in the white book, and we're behind tab
25 16, and we're on the second page.

W. MCCOY -- DIRECT BY MS. SPRUILL

1 A. The letter is dated 2013.

2 Q. That's right. But what I'm asking you about,
3 look at that first paragraph on the second page, does
4 that refresh your recollection about when you might
5 have learned about the second Michelin plant?

6 A. Okay. During this period of time, which
7 extended from May 1 through June 13, 2012.

8 Q. Okay.

9 A. Yeah.

10 Q. And at -- at that time, were you aware that
11 there was some dispute between the West Anderson Water
12 District and the City about who was going to serve that
13 new plant?

14 A. I'm not sure I remember.

15 Q. Okay. And from what you know, if the West
16 Anderson Water District wins this lawsuit, is it
17 capable of providing the water to the new Michelin
18 plant?

19 A. Yes.

20 Q. Has it got all the approvals of capacity it
21 would need?

22 A. Yes.

23 MS. SPRUILL: Let me confer briefly with my
24 co-counsel. I think that's all we have for you, Mr.
25 McCoy. Mr. Gibbs is going to have some questions for

W. MCCOY -- CROSS BY MR. GIBBES

1 you. I'd appreciate it if you would do you best to
2 answer them.

3 **CROSS EXAMINATION BY MR. GIBBES:**

4 Q. Have you got a cup of water, Mr. McCoy?

5 A. Yes, sir.

6 Q. I'm going to go get mine. Pardon me, one
7 minute.

8 A. Yes, sir.

9 Q. Mr. McCoy, we met at your deposition some
10 months back, is that correct?

11 A. Yes, sir.

12 Q. All right, sir. And I confess I wasn't paying
13 too good attention to the first questions Ms. Spruill
14 asked, and I apologize. But you graduated Clemson back
15 in 1962, or something like that?

16 A. You have a great memory.

17 Q. No, I got notes. I wasn't listening to her,
18 but I got notes. To make a long story short, you have
19 been a practicing engineer in this area for quite a
20 long period of time, have you not?

21 A. Yes, sir.

22 Q. All right, sir. And you were with Farmer &
23 Simpson or worked for them for some period of time?

24 A. Yes, sir, as a consultant.

25 Q. All right. And then eventually, you basically

W. MCCOY -- CROSS BY MR. GIBBES

1 set up your own firm; is that right?

2 A. Yes, sir. The three of us purchased it after
3 Mr. Simpson died.

4 Q. Okay. Now, I believe you told Ms. Spruill
5 that back in 2000, 2002, in that general time period,
6 that you were engaged or retained by the Anderson
7 County Water Association to help purchase the assets
8 from Duke; is that right?

9 A. Yes, sir.

10 Q. And, in fact, I think you said you and Kent
11 Guthrie were co -- co-project managers for that effort?

12 A. Yes, sir.

13 Q. All right. In fact, if we look back at some
14 of the early minutes of the Anderson County Water
15 Association, we'll see the two of you listed in each
16 corner as co-project managers for them?

17 A. Yes, sir.

18 Q. All right, sir. But I think you told Ms.
19 Spruill that your job and Mr. Guthrie's job basically
20 was to do what you could as engineers, in your case, to
21 help put this deal together with Duke for the Anderson
22 County Water Association -- at least at that time, to
23 buy the whole system?

24 A. Yes, sir.

25 Q. All right. And in that capacity, you dealt

W. MCCOY -- CROSS BY MR. GIBBES

1 with the water companies, you dealt with their lawyers;
2 you dealt with each other, and did what you could to
3 make that deal -- that deal happen; is that fair?

4 A. Yes, sir.

5 Q. All right, sir. Now, as you best recall it,
6 you even played some part in helping the members of the
7 Water Association to negotiate the terms of the deal
8 with them; did you not?

9 A. Yes, sir.

10 Q. And you also helped them negotiate the terms
11 of the sale and purchase agreement among themselves;
12 did you not?

13 A. Yes, sir.

14 Q. So you and Mr. Guthrie were heavily involved
15 in this entire transaction in your role as an engineer
16 and co-project manager; is that fair?

17 A. Yes, sir.

18 Q. All right, sir. Now, I want to ask to, again,
19 get Defendant's Exhibit 26. It ought to be the first
20 exhibit in the second notebook. Have you got that
21 document back in front of you, Mr. McCoy?

22 A. Yes, sir.

23 Q. All right. And if you look at the very first
24 page, this is the Second Amendment to Asset Purchase
25 Agreement, and it bears a date, February 20, 2002; is

W. MCCOY -- CROSS BY MR. GIBBES

1 that correct?

2 A. Yes, sir.

3 Q. All right. Now, to put this document into
4 perspective, the Anderson County Water Association
5 originally signed an agreement with Duke to buy the
6 wholesale system and the retail system; right?

7 A. Yes, sir.

8 Q. And then by the time we come to the second
9 amendment in 2002, the parties had reached a deal where
10 the Water Association would buy the wholesale assets
11 and the City would buy the retail assets; is that
12 correct?

13 A. Yes, sir.

14 Q. All right, sir. And in the process of doing
15 that, one of your jobs was to help facilitate the
16 creation of various maps of the service areas that each
17 member would serve; is that correct?

18 A. Yes, sir.

19 Q. All right, sir. And let me find it -- let me
20 ask you to look back in the first big black notebook at
21 Defendant's Exhibit 8. And do these appear to be
22 minutes of the Anderson County Water Association --
23 minutes of an Anderson County Water Association
24 meeting?

25 A. Yes, sir.

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. And these are dated September 11, 2001; is
2 that correct?

3 A. Yes, sir.

4 Q. And it shows, as president, about the middle
5 through that list, Steve Wilson from West Anderson;
6 does it not?

7 A. Yes, sir, and that date just hit me, too.

8 Q. And that it shows, as president, William
9 McCoy, Anderson County Water System; that's you, is it
10 not?

11 A. Yes, sir.

12 Q. And it lists you for Anderson County Water
13 System to show you -- that you're appearing as the
14 co-project manager, essentially, is that right?

15 A. Yes, sir.

16 Q. All right, sir. If you look at the second
17 page of this document, the very last paragraph, it says
18 "Mr. McCoy said that maps of the company's service
19 districts are being finalized and will be presented to
20 each company upon completion for your agreement for you
21 to send to the Secretary of State for approval"; do you
22 see that?

23 A. Yes, sir.

24 Q. All right. And so I take it that at this
25 particular meeting, you gave some report on the status

W. MCCOY -- CROSS BY MR. GIBBES

1 of the maps of at least the water companies' service
2 areas?

3 A. Yes, sir.

4 Q. All right. So at the time, you understood
5 that at least some of them, maybe all of them -- I'm
6 not sure -- but certainly West Anderson was in the
7 process of converting from a nonprofit company to a
8 special purpose district; did you not?

9 A. Yes, sir.

10 Q. All right. And to do that, they needed a map
11 to put with their application; is that it?

12 A. To get -- the two to work together, the
13 description and the map as an exhibit to go to the
14 Secretary of State.

15 Q. Okay.

16 A. Eventually.

17 Q. All right, sir. Now, if you look at
18 Defendant's Exhibit 9, which is the next document, this
19 is a -- also a set of minutes of the meeting of the
20 Anderson County Water Association; is it not?

21 A. Yes, sir.

22 Q. All right. And this is about ten days -- the
23 meeting was about ten days later on September 21, 2001;
24 is that correct?

25 A. Yes, sir.

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. All right, sir. And, again, it shows as
2 president, William McCoy, ACWS, that's you?

3 A. Yes, sir.

4 Q. And it shows the president, Steve Wilson, West
5 Anderson; does it not?

6 A. Yes, sir.

7 Q. All right. And if you look down at the last
8 paragraph on that page, big paragraph, in simple terms
9 Mr. Gibson, Chairman Gibson, gave a report on the
10 current status of the deal where the Water Association
11 would purchase the wholesale system and the City would
12 purchase the retail system; does it not?

13 A. Yes, sir.

14 Q. In other words, Mr. Gibson gave an update on
15 where that -- where those negotiations stood?

16 A. Yes, sir.

17 Q. But they're getting down to at least somewhere
18 need final, because they show the City's price at
19 \$15.58 million and the Water Association price at forty
20 -- about \$48 million; is that right?

21 A. Yes, sir.

22 Q. All right. And turn to page 2 of this
23 document. It looks like you gave a report -- read us
24 what the minutes say in paragraph 2, please.

25 A. "Mr. McCoy said that maps of the companies'

W. MCCOY -- CROSS BY MR. GIBBES

1 district boundaries and the Duke retail system are
2 almost complete, and should be ready for the companies
3 in the next few days."

4 Q. All right. And so at this point, you're
5 talking about both the maps of the water companies and
6 a map of the Duke retail system?

7 A. Yes, sir.

8 Q. Which the City was going to buy; is that
9 correct?

10 A. Yes, sir.

11 Q. And why did you need a map of the Duke retail
12 system at this point? Why was that being prepared?

13 A. For the same purpose, as far as getting -- so
14 everybody knows what you're buying.

15 Q. All right. Everybody knows what you're buying
16 and what territory you're going to serve; is that
17 correct?

18 A. Yes, sir.

19 Q. All right. Now, if you go back again -- and I
20 apologize for jumping around -- Defendant's Exhibit 26,
21 which is the second notebook, the first document.

22 A. Yes, sir.

23 Q. All right. Again, this is the second
24 amendment to the Asset Purchase Agreement, it's the
25 document that -- between Duke and the water -- what's

W. MCCOY -- CROSS BY MR. GIBBES

1 now the Joint Water System and the various members,
2 including West Anderson. And if you look at Exhibit 8,
3 which is on page 179, using those numbers at the bottom
4 right, Ms. Spruill asked you to look at this and -- I'm
5 sorry. Let me let you get there. This is a list of
6 the retail assets that the City is buying from Duke; is
7 that correct?

8 A. Yes, sir.

9 Q. All right. And then if you turn over two
10 pages, there is something called schedule 1 to Exhibit
11 A. And Ms. Spruill asked you some questions about it,
12 including about that first sentence. And it says, "the
13 retail mains and pipes are located within the retail
14 area -- service area shown in gray on the attached
15 map"; do you see that?

16 A. Yes, sir.

17 Q. And when it refers to the retail service area
18 shown in gray on the attached map, that is a reference
19 to the City's retail service area that it's buying from
20 Duke; is that right?

21 A. Yes, sir.

22 Q. All right, sir. Now, you actually played some
23 part, at least, in helping create this narrative
24 boundary description; did you not?

25 A. Yes, sir.

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. All right, sir. And I didn't quite follow the
2 gist of Ms. Spruill's questions, but as a civil
3 engineer -- if you're making a submission to the
4 Secretary of State, based on your experience, there is
5 a certain level of detail that has to go into a
6 boundary description; is that what you told Ms.
7 Spruill?

8 A. Yes, sir, in essence.

9 Q. All right. Now, this document here was not
10 submitted to the Secretary of State, was it? This
11 second amendment?

12 A. Are you talking about the entire document?

13 Q. Yes, sir. The entire document. To your
14 knowledge, it wasn't submitted to the Secretary of
15 State, was it?

16 A. To be quite honest with you, I don't know.

17 Q. Okay. That's fine. In any event, you helped
18 prepare this service area boundary description. And at
19 the time it was completed, you thought it was adequate
20 for purposes of this agreement; did you not?

21 A. Yes, sir.

22 Q. All right. And if you look at page 182, the
23 second page of the description, about midway down, it
24 lists -- it's included in the service area boundary
25 description, retail service area for the City of

W. MCCOY -- CROSS BY MR. GIBBES

1 Anderson, the Michelin plant property; does it not?
2 It's about midway down.

3 A. Yes. I see the BASF plant property and the
4 Michelin plant property.

5 Q. All right. And then if you turn over two more
6 pages in this document, page 184, there is actually a
7 map, is there not, that's referenced before?

8 A. Yes, sir.

9 Q. All right. And whose retail service are -- or
10 whose service area does that map show?

11 A. Well, all of the area is dark. It just shows
12 the City of Anderson and what they were purchasing.

13 Q. All right. And the dark area -- you're
14 correct. It's not the whole map. The dark area on
15 this map, which bears the title "Service Area Map
16 Retail Water Systems, City of Anderson", the dark area
17 is what you understood to be what the City's service
18 area would be under these transactions; is that
19 correct?

20 A. Yes, sir.

21 Q. And it includes the entirety of the Michelin
22 property; is that right?

23 A. Back here where it refers to the Michelin
24 plant property, yes, sir.

25 Q. Yes, sir. And the entirety of the Michelin

W. MCCOY -- CROSS BY MR. GIBBES

1 site, as described in that narrative, it is shown in
2 this black area that -- the one jutting out to the
3 bottom left; is that right?

4 A. Yes, sir.

5 Q. All right. Now, I believe that -- as I
6 recall, that you and Mr. Guthrie hired or engaged --
7 whatever the right word is -- the Beeson Rosier Group
8 -- engineer group -- to prepare the Exhibit D map; is
9 that right?

10 A. Yes, sir.

11 Q. All right. And who are they? Who are they?

12 A. It's a utility engineering firm. At the time,
13 they were located first in Liberty. And then they
14 moved out to Powdersville. And they were engineers for
15 -- I think, all except one, possibly two of the
16 companies that were in the -- in this group. And
17 because of that, you know, they had the facilities to
18 go ahead and prepare the map.

19 Q. So they basically had a good starting point
20 for preparing Exhibit D, as they already had some maps
21 for some of the people they served?

22 A. Yes, sir.

23 Q. Is that right -- okay. That makes sense. And
24 Mr. Beeson, I believe, is deceased now; is that
25 correct?

W. MCCOY -- CROSS BY MR. GIBBES

1 A. Yes, sir.

2 Q. But Mr. Rosier is very much alive and well?

3 A. Yes, sir.

4 Q. All right, sir. Now, this Exhibit D map that
5 -- in fact, you -- get one that's big enough where I
6 can read it. And you look at -- at -- I'm sorry. If
7 you look at the Exhibit D map that's attached to the
8 Water Sale Agreement, it actually shows at the bottom
9 the logo, or whatever you call it, for the Beeson &
10 Rosier Group; is that correct?

11 A. Yes, sir.

12 Q. And it says it's a map of the Anderson County
13 Joint Municipal Water System; is that right?

14 A. Yes, sir.

15 Q. All right. And it shows that -- the service
16 area that each member intended to serve under the Water
17 Sale Agreement; does it not?

18 A. Yes, sir.

19 Q. All right. And it's color coded so you can
20 tell which one is which; is that right?

21 A. Yes, sir.

22 Q. All right. And as you said, if you draw a map
23 -- I mean, this is all of Anderson County almost, isn't
24 it?

25 A. Yes, sir.

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. All right. If you draw a map of this scale,
2 you're not going to be accurate down to every hundred
3 feet; is that what you were telling Ms. Spruill?

4 A. Yes, sir.

5 Q. All right. But it's sufficiently accurate for
6 the purposes for which you engage Beeson & Rosier to
7 prepare it; isn't it?

8 A. That's what we were hoping.

9 Q. All right. And as it turned out, it is an
10 accurate portrayal of the service areas each member
11 intended to serve at the time they signed that Water
12 Sale and Purchase Agreement; isn't it?

13 A. Yes, sir.

14 Q. All right, sir. And included in the City's
15 service area, everybody agreed they would serve, is the
16 Michelin property; isn't it?

17 A. Yes, sir.

18 Q. All right. And to the best of your knowledge,
19 both the old Michelin plant and the new plant are
20 located within the confines of that red or orange area
21 that's shown there in the West Anderson area?

22 A. That would be.

23 Q. Yes, sir. Now, as you were working with Mr.
24 Beesier and Mr. Rosier -- Beeson and Mr. Rosier about
25 preparing Exhibit D, I take it you had conversations

W. MCCOY -- CROSS BY MR. GIBBES

1 with the various members of the water companies?

2 A. Yes, sir.

3 Q. All right. In fact, as we've seen from the
4 meeting minutes, you were keeping them updated on the
5 seismic mapping, preparing -- I assume at some point,
6 furnish them copies to review; is that fair?

7 A. Yes, sir.

8 Q. All right, sir. And, in fact, the person who
9 instructed you to show the Michelin site, that is part
10 of the City's retail service area on this map, was
11 Steve Wilson, wasn't it?

12 A. I don't remember that specific instruction.

13 MR. GIBBES: Your Honor, if I could show Mr. McCoy
14 his deposition, please.

15 THE COURT: Yes, sir.

16 BY MR. GIBBES:

17 Q. Mr. McCoy, I want to hand you the transcript
18 of the deposition we took from you.

19 A. Yes, sir.

20 Q. And in doing this, I want to be the first to
21 say that I find as I get a little bit older, my memory
22 sometime ain't what it used to be -- and in handing you
23 your deposition, I'm not trying to do anything but show
24 you what I -- or the record shows you said before.

25 A. Yes, sir.

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. But you recall me asking you questions at that
2 deposition, do you not?

3 A. Oh, yes, sir.

4 Q. And let me ask you this: If you'll turn to
5 page 34 of your deposition. Let me know when you're
6 there.

7 A. Yes, sir.

8 Q. All right. And you see the line numbers on
9 the left, line 15?

10 A. Yes, sir.

11 Q. All right. I asked you this question: "Back
12 at the time you were helping the Anderson County Water
13 System and Anderson County Water Association get
14 Exhibit D prepared, was it your understanding that
15 these three sites, the Michelin site, the BASF site and
16 the Owens Corning site, were going to be part of the
17 City of Anderson's retail service area?" Would you
18 read me your answer, please?

19 A. "Yes. Based on the information we were given
20 to create this map."

21 Q. And then I asked you: "And where would you
22 have gotten that information, from what source?" What
23 was your answer?

24 A. "Both from the City and Starr-Iva and West
25 Anderson."

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. And then I asked you: "And do you recall who
2 with West Anderson would have provided you that type of
3 information?" What was your answer?

4 A. "As I remember, it would have been Steve."

5 Q. "Steve Wilson?"

6 A. "Yes."

7 Q. "Who is sitting here in the room today?"

8 A. "Yes."

9 Q. "As a result of that, you worked with Mr.
10 Beeson and Mr. Rosier's group to show the Michelin site
11 and the Owens Corning site and the BASF site is a part
12 of Anderson's retail service area on what became
13 Exhibit D; is that correct?"

14 A. "Yes."

15 Q. All right, sir. Thank you. Now, Mr. McCoy,
16 if you don't mind, would you turn back to exhibit 29.
17 And this is the Water Sale and Purchase Agreement; is
18 it not?

19 A. Yes, sir.

20 Q. All right, sir. And let me ask you to turn to
21 section 6 0 2, which is on page 254 -- using the bottom
22 right numbers.

23 A. Yes, sir.

24 Q. Now, you actually participated or helped with
25 negotiations for this agreement on behalf of the Water

W. MCCOY -- CROSS BY MR. GIBBES

1 Association; did you not?

2 A. Yes, sir.

3 Q. All right, sir. And I take it that you would
4 have read section 6 0 2 before the agreement was
5 signed, did you not?

6 A. I would like to think I did.

7 Q. All right, sir. Well, let me ask you to look
8 at your deposition -- I tell you what, I'll look at it
9 and you take my word for it for a minute.

10 A. Yes, sir.

11 Q. And you are welcome to look at it.

12 MS. SPRUILL: What page?

13 MR. GIBBES: Page 36.

14 Q. And I said, as to this question, "Would I be
15 correct in assuming that you would have looked at this
16 section of the agreement; section 6 0 2, at some point
17 back in connection with your work on this matter?"
18 Your answer was: "All of us did." "Okay." And then
19 you said: "Multiple times." So, are you satisfied
20 that you would have looked at it at some point back --

21 A. Yes, sir.

22 Q. All right, sir. And if nothing else, it
23 referenced the territorial map that you were charged
24 with helping create?

25 A. Yes, sir.

W. MCCOY -- CROSS BY MR. GIBBES

1 Q. Okay. And, in fact, as you understood the
2 negotiations that you had personally participated in at
3 the time, section 6 0 2 reflected what the parties to
4 this agreement intended at that point in time; did it
5 not?

6 A. I'm sorry, say that one more time.

7 Q. Section 6 0 2, if you look at it right here.

8 A. Yes, sir.

9 Q. Reflected what you understood to be the
10 parties' agreement back at that point in time, does it
11 not?

12 A. Yes, sir.

13 Q. And when you take section 6 0 2, and Exhibit
14 D, what the agreement says in plain English is that the
15 City of Anderson is to serve these three sites, one of
16 which is the Michelin site on Michelin property?

17 MS. SPRUILL: Objection, Your Honor. The
18 agreement says what it says. He's attempting to put
19 words in the witness' mouth that aren't in the
20 agreement.

21 MR. GIBBES: Let me rephrase the question.

22 THE COURT: All right, sir.

23 BY MR. GIBBES:

24 Q. As you understood section 6 0 2 and Exhibit D,
25 and as you understood what the parties' intended based

W. MCCOY -- CROSS BY MR. GIBBES

1 upon your participation in the negotiations, what
2 Exhibit D shows is that the City's -- the service area
3 the City intended to serve included the entirety of the
4 area in orange, including the big part, and these three
5 remote sites --

6 MS. SPRUILL: Objection --

7 Q. -- didn't it --

8 MS. SPRUILL: Objection, Your Honor. Mr. McCoy is
9 not a party to the agreement. To the extent the
10 question calls for his interpretation of the intent of
11 the parties, that is the ultimate issue for Your Honor
12 to decide in this case, not through this witness.

13 THE COURT: Well, actually -- that's overruled.
14 He can say what he understood. Yes, sir.

15 MR. GIBBES: Yes, sir.

16 THE WITNESS: Do you mind repeating your last --
17 your last word?

18 MR. GIBBES: I'll tell you, let me do this.

19 BY MR. GIBBES:

20 Q. As you understood section 6 0 2 of the Water
21 Sale and Purchase Agreement, and Exhibit D that went
22 with it, what the parties intended at the time -- as
23 reflected in the agreement -- is that this area the
24 City would serve, under this agreement, included both
25 the big part that's in orange, and the three parcels

1 that are shown jutting out at the bottom, one of which
2 is the Michelin property?

3 A. Yes, sir.

4 Q. All right. Now, I want to ask you to pull --
5 get your deposition, if you would, Mr. McCoy, please.

6 I want to follow-up on one point we were looking at
7 earlier. If you'll turn to page 50, and if you look at
8 page 5 -- I'm sorry -- line 5. I asked you this
9 question: "And that Exhibit D was prepared as you
10 understood, you and Mr. -- you and Rosier and Mr.
11 Beeson were instructed to prepare it; is that correct?"
12 What was your answer?

13 A. "Yes. As I said, I cannot remember where all
14 of these boundaries came from, but that was it."

15 Q. My next question: "But you did understand at
16 the time, and I believe you said Mr. Steve Wilson
17 instructed you that the Michelin site was to be carved
18 out of the West Anderson District and shown as part of
19 the City's territory?" What was your answer?

20 A. "As this shows."

21 Q. "Yes. As it's shown on Exhibit D; is that
22 correct?"

23 A. "Yes."

24 Q. All right.

25 MR. GIBBES: That's all the questions I have, Your

1 Honor. Thank you, Mr. McCoy.

2 THE WITNESS: Yes, sir.

3 MS. SPRUILL: Maybe just one question.

4 THE COURT: Okay.

5 **REDIRECT EXAMINATION BY MS. SPRUILL:**

6 Q. I just have one for you, Mr. McCoy. Mr.
7 Gibbes had a long conversation with you about what
8 folks talked about, what folks' intent was, my only
9 question to you is, did you ever discuss with anybody
10 at the System or any of these member entities, what if
11 something changed down here in one of these three
12 properties sticking out in orange under the City of
13 Anderson -- back then?

14 A. I -- I -- I can't recall anything having been
15 discussed about what if.

16 MS. SPRUILL: Thank you. Thank you, Mr. McCoy.

17 THE COURT: Thank you.

18 MR. GIBBES: No further questions.

19 THE COURT: Thank you, sir. You may step down.
20 Please be careful.

21 THE WITNESS: Thank you.

22 MR. NICHOLSON: Your Honor, do you want to keep
23 going...

24 (Off-record discussion concerning schedule.)

25 THE COURT: All right. Well, we'll be at recess

D. EDWARDS -- DIRECT BY MR. NICHOLSON

1 until 1:30.

2 MR. GIBBES: Thank you, Your Honor.

3 MR. NICHOLSON: Thank you.

4 MS. SPRUILL: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (After a recess, court reconvened.)

7 MR. NICHOLSON: Are you ready to go, Your Honor?

8 THE COURT: Yes, sir.

9 MR. NICHOLSON: If it please the court, I would
10 call Dwight Edwards to the stand.

11 CLERK: Mr. Edwards, if you would please step
12 forward to be sworn in.

13 CLAYTON DWIGHT EDWARDS, having
14 been first duly sworn, testified as follows:

15 CLERK: State your full name for the record.

16 THE WITNESS: Clayton Dwight Edwards.

17 **DIRECT EXAMINATION BY MR. NICHOLSON:**

18 Q. Good afternoon, Mr. Edwards. How are you?

19 A. Fine. How are you doing?

20 Q. Mr. Edwards, do you have a role with West
21 Anderson Water District?

22 A. I do.

23 Q. What is that role?

24 A. I'm president.

25 MR. NICHOLSON: Judge Stiwell just stuck his head

D. EDWARDS -- DIRECT BY MR. NICHOLSON

1 in the courtroom...

2 THE COURT: Excuse me, one second.

3 (Pause.)

4 THE COURT: Okay.

5 BY MR. NICHOLSON:

6 Q. I think you said you're the -- tell us again
7 what your role is -- what your role is with --

8 A. President of the West Anderson Water.

9 Q. Okay. President of the Board?

10 A. Yes, sir, that's correct.

11 Q. How long have you had that position?

12 A. Four years.

13 Q. Four years. Okay. Give us a little bit of
14 your educational history, Mr. Edwards.

15 A. I was educated in Anderson through public
16 schools. I attended several colleges. The last one I
17 attended was Anderson College.

18 Q. Okay. I believe you told Mr. Gibbes in your
19 deposition that your father paid a lot for education?

20 A. He did.

21 Q. Okay. Tell us about your work history.

22 A. I've had several jobs, mostly -- most of my
23 life I've worked for myself. Prior to that, I was a
24 line supervisor with Duke Power Company. Prior to
25 that, I ran a cotton warehouse for my father.

D. EDWARDS -- DIRECT BY MR. NICHOLSON.

1 Q. Okay. And you -- did you have any involvement
2 in what we're talking about here, you and Duke -- with
3 any of the stuff we're talking about these contracts --

4 A. Other than knowledge.

5 Q. Okay. But that -- you weren't working --

6 A. No, no, sir. That wasn't my field of
7 expertise.

8 Q. Okay. Okay. And what do you do now?

9 A. I'm a builder. I own my own business.

10 Q. Okay. What are your duties in your role as
11 president with the West Anderson Water District?

12 A. To oversee the Board, make decisions pertinent
13 to daily business; instruct Steve in problems that he
14 may have, that he may need Board oversight or whatever.
15 Make decisions as far as the financial operation of the
16 West Anderson Water.

17 Q. Okay. How many Board members do --

18 A. Nine.

19 Q. Nine. Okay. What are their terms?

20 A. Their terms vary. All of -- the way the
21 regional water systems work, they're appointed by the
22 Anderson delegation.

23 Q. Okay.

24 A. And those terms rotate and vary easily two
25 years.

D. EDWARDS -- DIRECT BY MR. NICHOLSON

1 Q. Okay.

2 A. But they're staggered. You don't ever have
3 everybody going off or everybody up for -- for a Board
4 --

5 Q. Okay.

6 A. -- at the same time.

7 Q. How often is it that you have a certain number
8 of your members coming up to be considered for either
9 rolling off or --

10 A. Well, over the last few years, a lot of the --
11 a lot of our Board members are starting to get older.
12 So over the last few years, we've had probably more
13 turnover than we've had in the past.

14 Q. Okay. So -- so -- I mean, is it every two
15 years you have an election, every four years, what is
16 --

17 A. Some years we may replace two Board members;
18 some years we may replace one.

19 Q. Okay.

20 A. Some years we may replace none. But over the
21 years, you know, we've replaced just about everybody.

22 Q. Okay. Okay. Now, again, you've said you've
23 been with the Board for four years -- that's how long
24 you've been the chairman --

25 A. I've been with the Board since 2008.

D. EDWARDS -- DIRECT BY MR. NICHOLSON

1 Q. 2008. Okay. And you became chairman?

2 A. 2010.

3 Q. All right. All right. We've looked at these
4 -- at these minutes before, but just to kind of put us
5 in a timeframe, Mr. Edwards, go to Plaintiff's Exhibit
6 No. 15.

7 A. Which one is that going to be in?

8 Q. It's in the white book. I'm sorry.

9 A. Okay.

10 Q. Okay. These -- these are meeting minutes from
11 the West Anderson Water District; is that right?

12 A. That's correct.

13 Q. And do you all -- do you all do these
14 meetings? Would this have been a regularly scheduled
15 meeting?

16 A. It would have been.

17 Q. Okay. And the -- you notice in the middle of
18 the document, it says "Water Service to Michelin". It
19 notes that "Steve Wilson explained the matter of
20 boundaries and dispute with the City of Anderson over
21 the water service to Michelin. Cecil Harbin made the
22 motion to stop the City of Anderson from providing
23 water service to any future building sites of Michelin
24 since the site falls within our boundaries. A second
25 was made by Dwight Edwards, and all concurred."

D. EDWARDS -- DIRECT BY MR. NICHOLSON

1 A. That's correct.

2 Q. Is that your understanding of what happened at
3 that meeting?

4 A. It is.

5 Q. Okay. And so as it relates to the new
6 Michelin facility, the one that was announced around
7 2012, just to be clear, what is the Board's position?

8 A. The Board's position is that the new facility,
9 as well as the old facility, is in the boundaries of
10 West Anderson Water.

11 Q. Okay.

12 A. And that all we did in 2002, was convey the
13 right to serve that facility, not to give up any
14 boundaries.

15 Q. Okay.

16 A. Or any territory that was in West Anderson.
17 That's the reason we decided to take legal action on
18 this.

19 Q. With regard to the second Michelin plant, or
20 the new Michelin plant, do you have any -- have you
21 provided consent -- or do you consent to the City
22 providing water to it?

23 A. We specifically do not consent to that and
24 made that very clear in a meeting with the City.

25 Q. Okay. So -- okay. You had a -- tell us --

D. EDWARDS -- CROSS BY MR. GIBBES

1 you had a meeting with the City; tell us about that.

2 A. I'm not sure of the exact dates. I'm sure
3 it's in here. We sat down with a meeting with the
4 Economic Development Director of Anderson County and
5 the City of Anderson. We had had prior discussions
6 with economic development. We were aware of some of
7 the stuff that was going on, so we sat down with --
8 Ryan Heaty (phonetic) was there in a meeting at the
9 time, Mr. McClain. And we discussed the situation,
10 told him our position. And just -- I made it very
11 clear to them that they served this plant at their own
12 peril. That we claimed it as ours to serve or to turn
13 down to serve, and we intended to serve it.

14 Q. And to be fair, what was the City's position
15 at that time?

16 A. The City's position was that, you know, they
17 thought it was their territory, too.

18 Q. Okay. All right.

19 MR. NICHOLSON: That's all I've got, Mr. Edwards.
20 Thank you very much.

21 THE WITNESS: Thank you.

22 MR. GIBBES: May it please the court?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION BY MR. GIBBES:

25 Q. Mr. Edwards, I'm Frank Gibbes and we've met

D. EDWARDS -- CROSS BY MR. GIBBES

1 before?

2 A. We have.

3 Q. Just to be clear, you were not on the West
4 Anderson Board back in 2000, 2002; is that right?

5 A. I was not.

6 Q. Okay. In fact, your first time you were on
7 the Board was when?

8 A. 2008 -- the end of 2008.

9 Q. And so at the time, you were not -- you didn't
10 play any part in the negotiations for the Water Sale
11 and Purchase Agreement?

12 A. No, sir, other than just having knowledge,
13 I've been -- my father-in-law was one of the -- one of
14 the founders of the water company, one of our Board
15 members. But other than having knowledge, no, sir.

16 Q. Other than your father-in-law or somebody may
17 have passed on to you --

18 A. That's right. Second --

19 Q. You don't have any personal knowledge of those
20 negotiations --

21 A. No, sir, I do not.

22 Q. All right. And Mr. Nicholson asked you a
23 question -- and I tried to write down your answer --
24 but I think you said the West Anderson's Board position
25 is, you did not intend to give up any more boundary in

D. EDWARDS -- CROSS BY MR. GIBBES

1 2002 than the existing plant; is that right?

2 A. That's right. We --

3 Q. Is that what you testified to --

4 A. Yes, sir.

5 Q. The best you recall?

6 A. Yes, sir.

7 Q. And that is the Board's position?

8 A. That's correct.

9 Q. Is that your understanding?

10 A. That's correct.

11 Q. And your knowledge of that is based upon what
12 you have heard from others and perhaps reading the
13 agreement?

14 A. Reading the agreement, talking with the
15 Chairman of the Association at the time that it was
16 being formed.

17 Q. Let me ask you to get the black notebook in
18 front of us.

19 A. Yes, sir.

20 Q. The second one that has exhibit 29, and ask if
21 you would turn to exhibit 29. And do you recognize
22 that as a copy of the Water Sale and Purchase
23 Agreement; is that correct?

24 A. Yes, sir.

25 Q. All right, sir. And I know you've been

D. EDWARDS -- CROSS BY MR. GIBBES

1 sitting in the courtroom -- I think -- most of the day,
2 have you not?

3 A. I have.

4 Q. All right. If you look at page 260 of this
5 document -- do you see those numbers on the bottom
6 right -- this is the signature page where Mr. Hopkins,
7 as chairman of West Anderson, signed on behalf of the
8 water district; is that right?

9 A. It is.

10 Q. All right, sir. Now, if you turn back to page
11 254, you'll find section 6 0 2, do you not?

12 A. Yes, sir.

13 Q. All right, sir. And I take it you've had
14 occasion to read that in the course of this lawsuit?

15 A. I have.

16 Q. All right, sir. And in plain English, this
17 section 6 0 2 says that -- "the parties have agreed
18 upon a territorial map of the territories to the
19 parties of this agreement, in order to set out the
20 areas each intends to serve" -- it says that; does it
21 not?

22 A. It does.

23 Q. All right. And then it goes on to say, the
24 territorial map is attached hereto as Exhibit D; does
25 it not?

D. EDWARDS -- CROSS BY MR. GIBBES

1 A. It does.

2 Q. All right. And you understand this is a copy
3 of Exhibit D that your lawyer has put up on this big
4 board so we can all see?

5 A. Yes, sir, Mr. Gibbs. I've never looked at
6 that thing -- anything other than a colored
7 illustration.

8 Q. I'm sorry?

9 A. I've never looked at that map in anything
10 other than a colored illustration.

11 Q. What do you mean by a "colored illustration"?

12 A. Well, I've been in the building business a
13 long time, dealt with a lot of property, and it's not a
14 legal description of anything.

15 Q. Okay. Well, that -- my question is simply
16 this: The Water Sale and Purchase Agreement, it has
17 attached to it as Exhibit D this map?

18 A. Yes, sir.

19 Q. A smaller version. Now, your lawyer has blown
20 this up so everybody can look at it, but everybody
21 agrees this is Exhibit D to the agreement. Now, my
22 question is, this is the map that's attached as part of
23 the Water Sale and Purchase Agreement that shows the
24 areas each entity is to serve; does it not?

25 A. It was intended to be a map of the service

D. EDWARDS -- CROSS BY MR. GIBBES

1 area. I would agree with that.

2 Q. All right. And it shows as part of the City's
3 service area, the Michelin property, doesn't it?

4 A. Yes, sir, it does.

5 Q. All right. And when West Anderson, Mr.
6 Hopkins, signed the agreement, West Anderson agreed
7 that that was part of the City's service area; didn't
8 it? Isn't that what the agreement says?

9 A. That's what the agreement says and I think
10 there's some discrepancy between the agreement and
11 what's on that map.

12 Q. All right. What's the discrepancy? I'll
13 bite.

14 A. The intent from Mr. Hopkins --

15 Q. No --

16 A. -- and everybody --

17 Q. No, sir --

18 A. -- according to what I've been told --

19 THE COURT: Sir -- sir. Go ahead.

20 BY MR. GIBBES:

21 Q. You can't say what other people told you.

22 A. Okay. Repeat your question then.

23 Q. You say there's some discrepancy between this
24 map and what the agreement says?

25 A. Yes, sir. In my opinion.

D. EDWARDS -- REDIRECT BY MR. NICHOLSON

1 Q. Okay. What is that discrepancy? I'm dumb
2 enough to ask that question.

3 A. Well, it would have been -- it would have been
4 real hard to put on there, the building itself.

5 Q. Well, do you see the building itself on here?

6 A. No, sir. Do you? I don't.

7 Q. No, sir. I don't. I think that's exactly the
8 point.

9 A. Yeah.

10 Q. And what it shows very clearly is -- as we've
11 described it, it's a service area for the City that
12 includes the Michelin plant?

13 A. It also shows water lines coming across the
14 others, but that's -- that's only because that what was
15 purchased.

16 Q. Okay.

17 MR. GIBBES: That's all the questions I have.

18 THE COURT: Anything?

19 MR. NICHOLSON: Just a few, Your Honor.

20 THE COURT: Yes, sir.

21 **REDIRECT EXAMINATION BY MR. NICHOLSON:**

22 Q. This is -- is the only document from the Water
23 Sale Agreement, this map?

24 A. I don't even consider that a document.

25 Q. Well, that aside --

D. EDWARDS -- REDIRECT BY MR. NICHOLSON

1 A. I consider it an Exhibit and that's what it
2 says in this document.

3 Q. Turn to page 221 of that exhibit, exhibit 29.

4 MR. GIBBES: I'm sorry. What page?

5 MR. NICHOLSON: 221.

6 MR. GIBBES: Thank you.

7 BY MR. NICHOLSON:

8 Q. Can you see at the bottom there, it describes
9 the -- it describes the industrial facilities of
10 Michelin, the third line from the bottom -- do you see
11 that?

12 A. Yes, I do.

13 Q. And it states that -- "which are located
14 within the boundaries of West Anderson Water District"
15 -- do you see that?

16 A. I do.

17 Q. What does that mean to you?

18 A. Exactly what it states, that West Anderson
19 gave consent for something inside their boundaries, to
20 be served by another utility, and that's it.

21 Q. Okay. This says "which are located" -- where
22 -- when were those facilities located there?

23 A. In 2002, I think ground was broke somewhere in
24 2001.

25 Q. Okay. The facility we're talking about today

1 that this lawsuit is over, the new Michelin facility,
2 was that located in this area when this contract was
3 written?

4 A. It was not.

5 Q. Okay.

6 MR. NICHOLSON: That's all I have, Your Honor.
7 Thank you.

8 THE COURT: All right.

9 **RECCROSS EXAMINATION BY MR. GIBBES:**

10 Q. Mr. Edwards --

11 A. Yes, sir.

12 Q. Mr. Nicholson asked you some questions about
13 Exhibit D, and you said you don't even consider that to
14 be part of the agreement?

15 A. No, sir, I don't consider that to be a
16 document.

17 Q. And you don't consider it to be a part of the
18 contract, right?

19 A. It's an exhibit that's part of the contract,
20 and that's exactly what I consider it to be, as a
21 exhibit.

22 Q. Okay. Well, let me hand you --

23 MR. GIBBES: Can I get this opened.

24 THE COURT: Madam Clerk.

25

1 BY MR. GIBBES:

2 Q. Mr. Edwards, let me hand you your deposition
3 transcript. And you recall my asking you some
4 questions outside of court sometime ago?

5 A. I do.

6 Q. All right. And if you'll look at the first
7 page of this -- this appears to be the transcript of
8 your testimony?

9 A. It does.

10 Q. All right. Let me ask you to turn to page 19,
11 please. And looking at line 4, I asked you the
12 question, "What is your understanding of why the
13 District signed the Water Sale and Purchase Agreement
14 with the territorial map attached to it?" What was
15 your answer?

16 A. "There is no territorial map attached to it."

17 Q. "There isn't?" What was your answer?

18 A. "No, sir. This is an exhibit."

19 Q. Keep reading.

20 A. "You, as an attorney, should know that there
21 is no legal boundaries on that. There is no kind of a
22 description. It's not even correct."

23 Q. My question was: "Wait a minute. I'm going
24 to let you say everything you want to say, but let me
25 get the right document in front of us. If you'll find

1 exhibit 14 in your stack." And you said, "Yes, sir."
2 "Have you got that? If you look at the very last page,
3 we know by now that is Exhibit D, the territorial map."
4 What was your answer?

5 A. "Yes, sir, it is."

6 Q. "Now, what is your -- I didn't mean to
7 interrupt you" -- and you said "that's okay". "What
8 were you wanting to say about this map, Exhibit D?"
9 What was your answer?

10 A. "It's an exhibit. That's all it is."

11 Q. And my question is, "Because it's an exhibit,
12 is it your understanding it is part of the contract?"
13 What was your answer?

14 A. "No, sir."

15 Q. "So, it would be your position it's not part
16 of the contract?"

17 A. "No, sir."

18 MR. GIBBES: Thank you. That's all the questions
19 I have.

20 THE COURT: Thank you, sir. You may step down.
21 Please be careful.

22 THE WITNESS: Thank you.

23 MS. SPRUILL: Your Honor, Mr. Edwards was our last
24 witness. We do have -- and by agreement of the
25 parties, unless Your Honor tells us that you would

1 MR. GIBBES: Do I get one of those colored sets?

2 MS. SPRUILL: Let me grab one back. I gave her
3 two. I do have one for you.

4 MR. GIBBES: Thank you.

5 MS. SPRUILL: With that, I believe the West
6 Anderson Water District rests, Your Honor.

7 THE COURT: Okay. All right.

8 MR. GIBBES: Your Honor, with that I would like to
9 make a motion on behalf of the City.

10 THE COURT: Yes, sir.

11 MR. GIBBES: Taking all the evidence, and
12 construing the evidence with the inferences --
13 reasonable inferences in favor of West Anderson, the
14 City moves for a directed verdict on Plaintiff's
15 claims.

16 There simply is no controversy in the evidence,
17 but that -- number one, the agreement is unambiguous
18 from our point of view, now that the City -- West
19 Anderson has presented its evidence.

20 Everybody has admitted that the agreement
21 contained section 6 0 2, with a territorial map
22 attached to it. In spite of some witness' efforts to
23 explain it away, everybody has acknowledged that it
24 sets forth territories or service areas that every
25 member is to serve. Section 6 0 2 sets forth, in

1 explicit terms, that is appropriate here, that the
2 whole purpose for the numbers in agreeing to section 6
3 0 2, was to avoid this lawsuit, future disputes. And
4 there is nothing ambiguous in section 6 0 2 at all.

5 And I know Your Honor made some opening comments
6 today about the introductory clause, or whereas clause,
7 whatever you want to call it -- the first clause, West
8 Anderson's -- but what it does, it's not inconsistent
9 with section 6 0 2. Because if Your Honor looks at
10 Exhibit D, and looks at the West Anderson territory,
11 the Michelin site comprises only a very, very small
12 part of the West Anderson geographic boundaries.

13 And 6 0 2 -- I'm sorry -- the whereas clause,
14 what the City did was acknowledge that it would not
15 take this pipe that it paid for, to run to the Michelin
16 facility -- and use it, to feed off of it, to serve
17 other customers in the rest of West Anderson's
18 territory. And that is a plain and reasonable meaning
19 of the whereas clause.

20 But the simple fact is, if you listen to Mr.
21 McCoy, Mr. McCoy is their retained engineer. He is
22 their agent. He admitted that he was asked by Steve
23 Wilson, the District's general manager, to prepare
24 Exhibit D to set forth the service areas that each
25 member would serve. And I believe he said that -- they

1 understood what they were going to serve.

2 And when you consider Mr. McCoy's testimony that
3 Mr. Wilson instructed him to do that, and you put it
4 with the admissions of Mr. -- Mr. Edwards doesn't want
5 to admit that Exhibit D is a part of the contract, but
6 obviously it is, and there simply is no ambiguity in
7 this agreement when you construe it reasonably in light
8 of the evidence that's now in the record.

9 Now, recognizing that the court could disagree
10 with me, and find the agreement ambiguous, still if you
11 take the evidence that has been presented by West
12 Anderson to this point, and construe it in their favor,
13 taking all the reasonable inferences in their favor,
14 the fact is that the whereas clause says the City will
15 serve the named customers, and the named customers,
16 Michelin is still there.

17 So even under their construction of the
18 agreement, the Michelin entity, it still owns the site.
19 And they gave their consent for us to serve the
20 Michelin industrial facilities under name of customer.
21 Nothing has changed from 2002.

22 Now, I'm painfully aware of Mr. Wilson's
23 testimony that he thinks the agreement was limited to
24 the existing facility, but Mr. Wilson acknowledged
25 honestly and candidly -- I'll give him credit for that

1 -- that he didn't participate in the negotiations for
2 the Water Sale and Purchase Agreement. He did his job
3 as general manager and received information from Mr.
4 Hopkins and others about the negotiations, but he
5 admitted that he did not directly participate in the
6 negotiations with the City that were -- and do -- they
7 were handled by representatives Keith -- Kent Guthrie
8 and William McCoy, co-project managers.

9 And so while Mr. Wilson can sit on the stand and
10 truthfully say that he thought it was limited to the
11 existing facility under the quote, "rules" -- I think
12 he called them -- the rules of the Water Association,
13 that is not evidence that that was ever conveyed to or
14 made part of the negotiations with the City. Mr.
15 Wilson doesn't have any personal knowledge of that.

16 And they have presented no one else to this
17 point whose got personal knowledge of those
18 negotiations, other than Mr. McCoy. And Mr. McCoy, if
19 you recall his testimony, said we were hired to
20 facilitate a deal. Part of our job was to get Exhibit
21 D prepared. He said he read 6 0 2 many times. And he
22 said that 6 0 2, under the territorial map, expressed
23 the agreement of the parties, in plain words.

24 There simply is no credible efforts, no
25 reasonable inference that can be drawn from the

1 evidence in the record, that the parties intended
2 anything except what the agreement, in plain English,
3 says on its face.

4 And that is, that each member was entitled to
5 serve and have its service area, what is so nicely
6 shown on Exhibit D.

7 And we're glad -- if the court requires it -- to
8 put up our case, but I don't think at this point we
9 should be required to.

10 Michelin was the named customer back then;
11 Michelin is the named customer now. It's clear we're
12 entitled to serve that property as part of our service
13 area. And there simply is no reasonable inference that
14 can be drawn that would entitle the West Anderson to a
15 declaration that we can't serve this new facility. For
16 that matter, any part of the Michelin site.

17 THE COURT: Yes, ma'am -- or sir.

18 MS. SPRUILL: I'll argue for the District, Your
19 Honor. As an initial matter, Mr. Gibbs' arguments
20 were all presented in his trial brief. And our
21 arguments, to the contrary, were all presented in our
22 trial brief. We don't believe that the City of
23 Anderson could buy our territory. We still take that
24 position.

25 And this evidence this morning has shown you

1 that there was, in 2002, one plant at the Michelin site
2 owned by Michelin. They had one contract for one tap
3 with Duke, that was transferred to Michelin. And all
4 that was transferred, was that contract. It's not
5 territory.

6 When you look at those retail asset definitions,
7 the City -- Duke didn't sell them. The City couldn't
8 buy territory. What they could buy were assets. They
9 bought mains. They bought pipes. They bought
10 contracts. The contract is the contract to the then
11 existing Michelin plant.

12 We still contend that this agreement is
13 unambiguous in our favor. I -- it talks about the
14 industrial facilities which are located -- and then it
15 says that, yes, West Anderson consents to those
16 industrial facilities which are located. And then it
17 says that consent is to be strictly limited to the
18 provision of service to those named industrial
19 customers.

20 So what Mr. Gibbes would have to do is look at
21 6 0 2 to the exclusion of the rest of the agreement.
22 If the City owns everything that's in orange, like it
23 tells you, why in the world is this language in here
24 about consent. If they own it, why would they ever
25 have to ask for our consent. It just doesn't make any

1 sense.

2 You know, they -- you've heard a lot of
3 testimony about 6.02, it says what it says. Your Honor
4 can see it, can see that language there. It gets
5 confusing because a lot of these maps have in -- words
6 like "service area" and "boundaries", but the truth of
7 the matter is that is shorthand for the retail assets,
8 which are being transferred because Duke couldn't
9 transfer territory, so they came up with this shorthand
10 for what Duke could transfer.

11 Mr. McCoy told you that that's not how you set
12 boundaries. You set boundaries with what you filed
13 that is official. And looking at our boundaries, the
14 Michelin property is in there.

15 Pursuant to state statute, the City can only
16 serve outside its territory and in another district
17 with the consent of that district. And it has it on
18 Michelin I, but it doesn't have it on Michelin II.

19 And I'm happy to go into all of the agreement --
20 all the arguments we've made as a matter of law as to
21 why, either our construction should prevail or there
22 should not be -- or there can't be a valid agreement as
23 to the entire territory. And I'm happy to make those
24 again for the record, but they're in our trial brief.

25 THE COURT: The court is aware of those. Thank

1 you very much. Yes, sir.

2 MR. GIBBES: Your Honor, one point I would respond
3 to, Ms. Spruill, both in her argument and in her brief,
4 I think keeps saying that we take the position we
5 bought from Duke the territory. We don't take that
6 position. We obviously do not buy the real property
7 that's a Michelin site, what we bought from Duke was
8 the assets. But in those agreements, it did describe
9 the retail service area in which those assets lay, in a
10 manner that was consistent with the agreement executed
11 a month later on the Water Sale and Purchase Agreement.

12 And where we arrived our consent to serve the
13 Michelin site is not from Duke, but from West Anderson,
14 who gave, in two respects, (1) in the Water Sale and
15 Purchase Agreement directly; and (2) when they waived
16 their objections to the Duke Michelin Water Sale
17 Agreement that was assigned to us.

18 But we would, again, respectfully ask the court
19 to direct a verdict in favor of the City at this point.

20 MS. SPRUILL: We would just respond very briefly
21 on the waiver issue. That is an agreement between the
22 Joint System and Duke, and it is just as to Duke's
23 agreement with Michelin, which was a ten year as to one
24 tract. And that is not part of the ultimate Water Sale
25 and Purchase Agreement, so it doesn't really have any

1 MR. GIBBES: And I guess we'll call our first
2 witness.

3 THE COURT: All right, sir. Yes, sir. I tell you
4 what let's do, let's take more than five minutes there.
5 We'll just start at about 20 after.

6 MR. GIBBES: That will be fine.

7 THE COURT: That will be fine. Does that give
8 everybody time to reload a little bit?

9 MR. GIBBES: Yes. Thank you..

10 MR. NICHOLSON: Thank you.

11 (Discussion off-record concerning schedule.)

12 THE COURT: Did everybody have enough time?

13 MR. GIBBES: Yes, sir.

14 MR. NICHOLSON: Yes, sir.

15 THE COURT: Could I see the lawyers just a minute?

16 MR. GIBBES: Oh, I'm sorry.

17 MS. SPRUILL: Okay.

18 (Whereupon, a bench conference was held.)

19 THE COURT: Yes, sir.

20 MR. GIBBES: Judge, on behalf of the City, as West
21 Anderson did, we would hand up excerpts from two
22 depositions for inclusion in the record on behalf of
23 the City. I've got two copies of each, one is Mr.
24 Edwards' deposition testimony; and one is Mr. Wilson's.

25 And we didn't have the fancy machine, but we've

J. MOORE -- DIRECT BY MR. GIBBES

1 marked in black magic marker the parts we wanted and
2 then we've marked in red what they wanted us to add.
3 And I don't think they have any objections --

4 THE COURT: Any objections?

5 MS. SPRUILL: That's the procedure as we agreed.

6 THE COURT: Without objection.

7 MR. GIBBES: Okay. Your Honor, the City would
8 call John Moore as our first witness.

9 THE COURT: Yes, sir.

10 CLERK: Mr. Moore, if you would please raise your
11 right hand.

12 JOHN RALPH MOORE, JR., having
13 been first duly sworn, testified as follows:

14 CLERK: Please state your full name for the
15 record.

16 THE WITNESS: John Ralph Moore, Jr.

17 CLERK: Thank you, sir. You may have a seat
18 around in the witness stand.

19 THE COURT: Yes, sir.

20 MR. GIBBES: May it please the court.

21 DIRECT EXAMINATION BY MR. GIBBES:

22 Q. Would you state your name for the record --
23 maybe you just did that -- do it again, please?

24 A. John Ralph Moore, Jr.

25 Q. All right. Mr. Moore, where do you live at

J. NOORE -- DIRECT BY MR. GIBBES

1 the current time?

2 A. I live at 206 Brittany (ph) Park, Anderson,
3 South Carolina.

4 Q. How long have you lived in the city of
5 Anderson?

6 A. Since 1976.

7 Q. All right, sir. Where did you go to high
8 school?

9 A. T.L. Hanna High School in Anderson.

10 Q. And after that, did you go to college or
11 several colleges or whatever we've heard about today?

12 A. I did.

13 Q. All right. Where did you go?

14 A. I went to Clemson and received a BS in
15 Financial Management, and then went to the University
16 of South Carolina and got an MBA.

17 Q. And what year did you get your degree from
18 Clemson?

19 A. 1975.

20 Q. And how about Carolina?

21 A. 1976.

22 Q. Okay. I'm dying to ask him who he pulls for.
23 in a football game, but I already know so I won't ask.
24 No Clemson fans can be comforted. When did you first
25 become employed by the City of Anderson in any

J. NOORE -- DIRECT BY MR. GIBBES

1 capacity?

2 A. December, 1976.

3 Q. All right. And have you worked continuously
4 for the City since that time?

5 A. I have.

6 Q. When -- what -- what job did you hold during
7 the first part of your tenure with the City?

8 A. Finance Director.

9 Q. And how long did you hold that job?

10 A. Fourteen years.

11 Q. All right. What years roughly?

12 A. December, 1976, until September, 1991.

13 Q. All right. And in 1991, what position did you
14 take with the City?

15 A. I became the City Manager.

16 Q. And you've held that position continuously
17 since?

18 A. I have.

19 Q. And in very brief terms, what are your
20 responsibilities as City Manager?

21 A. The City Manager is a CEO for municipal
22 government, and there's 450 employees that work for the
23 organization. We have nine divisions, Police Chief,
24 Fire Chief, Utilities Directors and others that report
25 to me. I report to the Mayor and Council.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. And that was going to be one of my next
2 questions, the utilities department, what does that
3 encompass within the City?

4 A. That's the City's water and waste water
5 operations.

6 Q. All right. And who is the head of the City
7 utilities department?

8 A. Mr. Jeff Caldwell.

9 Q. And do you recall when he first came with the
10 City in that capacity?

11 A. Roughly 2003.

12 Q. All right. And does he report directly to
13 you?

14 A. He does.

15 Q. All right. Now, are you a member of any
16 professional organizations that relate to your job as
17 City Manager?

18 A. I am a member of the South Carolina City and
19 County Management Association and also the
20 International City Management Association.

21 Q. All right. Have you held any positions with
22 either organization?

23 A. I've been in numerous positions with the South
24 Carolina City County Manager, including treasure and
25 vice president.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. Okay. Now, tell us very briefly about the
2 relationship between Duke and the City and water -- the
3 City water system prior to 2000 -- prior to 2000 or so.

4 A. Actually the initial water system was owned
5 and operated by the City. Later on in time, before my
6 time, it was franchised out and Duke operated that
7 system under a franchise agreement with the City. And,
8 again, that continued on until this sale.

9 Q. Okay. Now, when did you, the City, first take
10 any steps to look into acquiring part or all of the
11 Duke water system -- and I'll use that to refer to the
12 wholesale and retail part that we're talking about.

13 A. Our first contact with Duke was back in
14 probably 1992.

15 Q. Okay. Will you give us a very brief
16 description of the scope of that contact and the
17 result?

18 A. Due to the relationship the City had with
19 Duke, through the franchise agreement, provided water
20 for the City. We became aware that they were going to
21 concentrate on power, and they would be divesting
22 themselves out of the water system. And so that was in
23 1992. We made a venture to Charlotte to express
24 interest to buy the system as far back as that.
25 Because generally speaking, most municipalities do

J. MOORE -- DIRECT BY MR. GIBBES

1 provide water for their city residents in the
2 surrounding areas.

3 Q. All right. What was the result of that
4 contact? Did they agree to sell to you at that time?

5 A. Well, it certainly wasn't a written contract,
6 but we just said we would like to have first
7 opportunity to purchase that system, and they said they
8 would.

9 Q. All right.

10 A. Yes.

11 Q. Now, before all of this occurred and the Water
12 Sale Agreement was signed in 2002, who provided potable
13 water services to Michelin at the Michelin site?

14 A. Duke.

15 Q. All right. TO your knowledge, did West
16 Anderson ever provide potable water services to
17 Michelin at the Michelin site?

18 A. No.

19 Q. Before 2002 -- and I'm going to ask this
20 question -- did the City ever provide potable water
21 services to Michelin at the Michelin site before 2002?

22 A. No.

23 Q. Now, when did you first become familiar with
24 the effort to set up a joint Water Association -- a
25 Joint Water System as it relates to all this, and how?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. I'm not sure of the exact date, I would say it
2 would be in the late 2000s or 2001 -- and what was the
3 second part of the question?

4 Q. Well, how did you first become aware that Duke
5 wanted to sell its system to anybody in the late 1990s
6 or early 2000?

7 A. When they -- they did make us aware that they
8 were accepting proposals to purchase the system.

9 Q. Okay. Now, when you say "the system", you
10 mean the entire Anderson County system, the wholesale
11 and the retail system; is that correct?

12 A. Yes, sir.

13 Q. All right. Did the City make efforts to
14 acquire the entire system?

15 A. We did.

16 Q. And what was the City's purpose or reason for
17 doing that -- or trying to do that?

18 A. We felt, as a municipality, we could step in
19 the shoes of Duke Energy, and serve not only the City
20 residents, but also the surrounding areas.

21 Q. Had the City been able to do that, or
22 succeeded in doing that, would the City had been the
23 owner of the water system and sold water to the water
24 companies like West Anderson?

25 A. Yes.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. All right. Now, what was the -- did the City
2 actually submit a bid for the entire Duke System?

3 A. Yes.

4 Q. And do you recall the approximate amount of
5 that bid?

6 A. It was roughly \$51 million.

7 Q. Now, if Mr. Wilson testified that the water --
8 the Anderson County Water Association won that bid,
9 with their bid of \$70 million dollars, is that
10 consistent with your recollection?

11 A. I certainly knew they had submitted a bid, and
12 Duke was very secretive about that bid, and never
13 really announced to us that they won it or what their
14 price was initially.

15 Q. Okay. But you -- you were advised that the
16 City was not successful --

17 A. Yes.

18 Q. -- in buying the entire system?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. All right. Now, back at the time that these
23 initial negotiations were going on -- well, let me ask
24 you this -- let's go forward a little bit and try to
25 save a little time. As the testimony in court has

J. MOORE -- DIRECT BY MR. GIBBES

1 shown, did there come a time when there were
2 negotiations for the City to buy Duke's retail system
3 and the Joint Water System to buy the wholesale system?

4 A. Yes.

5 Q. All right. And who primarily was involved in
6 negotiations for the acquisition of the Duke system in
7 those two parts on behalf of the City?

8 A. Mayor Richard Shirley, myself, Frankie
9 McClain, the City attorney. We also had bond counsel,
10 Dan McLeod. We had Jim Brailsford as a specialist in
11 utilities, an attorney. And Chuck Joye, a principle
12 with Design South Engineering.

13 Q. And you mentioned Richard Shirley's name as
14 mayor. I think we all know that he is now the Clerk of
15 Court; is that correct?

16 A. That's correct.

17 Q. But he was the mayor at the time?

18 A. Yes. And I failed to mentioned we also had
19 SEBK (Ph) Consulting Firm. They were an integral part
20 of the team buying the system.

21 Q. As the negotiations for the purchase of the
22 Duke retail system by the City and the purchase the
23 wholesale system by the Anderson County Water
24 Association continued, who were the primary negotiators
25 for the Anderson County Water Association?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. It was Charlie Gibson, Kent Guthrie, William
2 McCoy, Frank Turner; and their attorney was Leo Hill.

3 Q. All right. And who was Charlie Gibson at the
4 time?

5 A. Charlie was the Chairman of the Board for
6 Sandy Springs Water.

7 Q. And who was Kent Guthrie at the time?

8 A. Kent initially was the manager from Sandy
9 Springs, and later became co-project manager for the
10 purchase team.

11 Q. And we heard from Mr. McCoy, he was the other
12 co-project manager for the water association?

13 A. Yes.

14 Q. All right. Now, Leo Hill, he was an attorney
15 in Greenville; is that correct?

16 A. Yes.

17 Q. All right. Did you participate -- to the
18 extent the City was involved in negotiations with Duke
19 and with the Water Association, did you participate in
20 those negotiations to your knowledge?

21 A. All of them to my knowledge.

22 Q. And so you have personal knowledge of those
23 negotiations?

24 A. Yes.

25 Q. Do you recall Steve Wilson from West Anderson

J. MOORE -- DIRECT BY MR. GIBBES

1 being involved in those negotiations personally?

2 A. No.

3 Q. So he was represented, as you understood it,
4 by Mr. Guthrie and Mr. McClain, Mr. Hill?

5 A. That's who our dealings were with.

6 Q. All right. I don't know how much it matters,
7 but who was the primary negotiators for Duke, so that
8 we have a cast of players.

9 A. Initially, it was the Senior Vice President by
10 the name of Bob Lillian. Their legal counsel was Jeff
11 Griffith. That later changed when they brought another
12 attorney out of Columbia, Bill Austin.

13 Q. Now, let me ask you to look at Defendant's
14 Exhibit 2 in the notebook. This -- there's plenty of
15 testimony this is an asset purchase agreement that the
16 water companies and Duke entered into in February of
17 2000, under which they were going to buy the entire
18 system. Would you have seen this document back at that
19 time?

20 A. Yes.

21 Q. All right. So a copy was furnished to you?

22 A. Yes.

23 Q. All right. Now, let me also show you
24 Defendant's Exhibit 7, and ask you to look at
25 Defendant's Exhibit 7 -- I'm sorry, have you got the

J. MOORE -- DIRECT BY MR. GIBBES

1 right book there?

2 A. Okay.

3 Q. This document is the first amendment Asset
4 Purchase Agreement -- the first amendment to the
5 agreement that you just looked at -- it's dated August
6 1st of 2001. At this point, was the City a party to
7 this first amendment?

8 A. No.

9 Q. All right. So this remained an agreement
10 between Duke and the water companies and -- it looks
11 like the Anderson County Joint Municipal Water System?

12 A. Yes.

13 Q. Did you receive and review a copy of this
14 document at or about the time --

15 A. I did.

16 Q. Now, am I correct that it was somewhere in
17 this time period, August of 2001, Summer of 2001, that
18 the deal began to come together for the City to
19 purchase the retail system from Duke, and the Water
20 Association the wholesale system?

21 A. That would be correct.

22 Q. Tell me what your recollection is about how
23 that allocation came about where you -- the City would
24 buy the retail system?

25 A. I'm not -- I'm not really following the

J. MOORE -- DIRECT BY MR. GIBBES

1 question.

2 Q. Okay. Well, let me ask you this: At some
3 point the Water Association was to buy the entire Duke
4 system?

5 A. Right.

6 Q. Now, all of a sudden, we're talking about the
7 City buying the retail system; what lead to that --
8 ultimately to that agreement?

9 A. Well, from -- from the beginning of the bids,
10 the City protested the fact that being one-third of the
11 customers on the entire Duke system, that we would not
12 be a party to the sale, and insisted on some
13 involvement in the process. And that's when Bill
14 Austin was kind of brought in as a -- I'd call him a
15 peace maker between the parties -- to begin to get the
16 City to be involved in purchasing its retail system.

17 Q. Now, let me ask you about the Water Sale and
18 Purchase Agreement, and ask you to look at Defendant's
19 Exhibit 29; do you recognize this to be a copy of the
20 Water Sale and Purchase Agreement that was executed as
21 of March 21, 2002?

22 A. Yes.

23 Q. All right. Now, at some point, we'll go back
24 and look at a few more documents before we come back to
25 this, but at some point, did the members -- potential

J. MOORE -- DIRECT BY MR. GIBBES

1 members of the Joint Water System recognize that they
2 needed a comprehensive agreement that described their
3 responsibilities to each other?

4 A. Yes.

5 Q. All right. And that agreement became
6 Defendant's Exhibit 29, the Water Sale and Purchase
7 Agreement; is that right?

8 A. Yes.

9 Q. Now, who -- who was involved in negotiating
10 the terms of this Water Sale and Purchase Agreement on
11 behalf of the City?

12 A. The same parties that I mentioned earlier.
13 But again, Mayor Shirley, myself; City Attorney, Frank
14 McClain. Jim Brailsford, Chuck Joye, and members of --
15 Dan McLeod and members of the SEBK team.

16 Q. And who represented the water companies -- or
17 members of the Anderson County Water Association in
18 negotiations on the terms of this Water Sale and
19 Purchase Agreement?

20 A. Leo Hill represented the water companies, but
21 Margaret Pope represented the -- the soon-to-be the
22 Joint System.

23 Q. Did Mr. Guthrie and Mr. McCoy continue to --

24 A. Yes, I'm sorry. They did.

25 Q. And who did they work for or represent in

J. MOORE -- DIRECT BY MR. GIBBES

1 these negotiations with the Water Sale and Purchase
2 Agreement?

3 A. They were still employed by the Anderson
4 County Water Association.

5 Q. All right.

6 A. As co-managers.

7 Q. Now, you mentioned a new person -- at least
8 new in terms of your testimony, and that's Margaret
9 Pope. Who was Ms. Pope and what was her role in
10 connection with this Water Sale and Purchase Agreement?

11 A. To draft up the agreement that would establish
12 the Anderson Regional Joint Water System.

13 Q. All right. And Ms. Pope, at that time was an
14 attorney in Greenville; is that right?

15 A. Out of Columbia, I think.

16 Q. Okay. Located somewhere in the state?

17 A. Yes.

18 Q. All right. And with respect to the drafting
19 of the terms of the Water Sale and Purchase Agreement,
20 who did you understand she represented?

21 A. All of us, all of the parties.

22 Q. Now, I want to ask you a few questions about
23 -- from the City's perspective -- as y'all were working
24 on the deal with Duke, and working on the terms of the
25 Water Sale and Purchase Agreement, as you understood

J. MOORE -- DIRECT BY MR. GIBBES

1 the situation at the time, if the City became a member
2 of the Joint Water System and signed this Water Sale
3 and Purchase Agreement, what entity would actually own
4 the water plant?

5 A. The Anderson County Regional Joint Water
6 System would own the water plant.

7 Q. All right. And there are certain lines that
8 run from the plant out to each member's territory,
9 loosely speaking; is that correct?

10 A. Yes. Yes.

11 Q. As you understood the terms of the deal, what
12 entity would own those lines?

13 A. Some the Anderson Regional Joint System would
14 own it exclusively; some of it would be owned jointly
15 by the City of Anderson and the Anderson Regional Joint
16 Water System.

17 Q. All right. Now, at -- the total cost of the
18 system that the Joint Water System was buying was
19 approximately how much?

20 A. Could you repeat that?

21 Q. How much -- well, let me ask this question:
22 How did the Joint Water System propose to finance the
23 cost that it was going to incur in connection with this
24 transaction?

25 A. Through revenue bonds.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. All right. And from what sources of revenue
2 would the Joint Water System pay the debt on the bonds?

3 A. Well, it would be contractual relationships
4 from the members to the joint system; and then the
5 members would rely on revenues from their retail
6 systems.

7 Q. So in the case of the City, you committed --
8 you anticipated you would have to commit to make manual
9 -- or whatever the payment -- periodic payment to your
10 water system to purchase your allocated capacity of
11 water; is that correct?

12 A. That's correct. It was a fixed cost for the
13 allocated capacity.

14 Q. All right. And the source of your revenue to
15 pay those would be the revenues from your water system;
16 is that correct?

17 A. The water customers, that's correct.

18 Q. And at the time y'all were discussing the
19 Joint Water System, the Water Sale and Purchase
20 Agreement, did the City anticipate that this would
21 extend over a long period of time?

22 A. Yes.

23 Q. In fact, there's plenty of testimony -- and
24 the documents speaks for itself -- but the initial term
25 of the Water Sale and Purchase Agreement was roughly 30

J. MOORE -- DIRECT BY MR. GIBBES

1 years; is that right?

2 A. Which is typical for municipal bonds.

3 Q. Now, I do want to ask you this question: As
4 the City was considering joining the Joint Water System
5 and signing an agreement like the Water Sale and
6 Purchase Agreement, did the City expect to have a
7 service area that it would service under the agreement?

8 A. Absolutely.

9 Q. All right. And what was the importance of
10 having a defined service area to the City in terms of
11 planning for the needed financial commitments and
12 planning for the future?

13 A. We certainly needed to know the number of
14 customers that we would be serving, potential growth
15 areas that we would be serving. And then those would
16 dictate the capacity that the City would buy as part of
17 the joint system.

18 Q. All right. So if the City service area was a
19 certain geographic area, and within that there was a
20 certain concentration of customers, that dictates to
21 the City or told the City what capacity it would need
22 both presently and for the future; is that correct?

23 A. Yes.

24 Q. All right. Now, when the City was making a
25 decision to undertake this participation in the Joint

J. MOORE -- DIRECT BY MR. GIBBES

1 Water System, did you anticipate that the list of City
2 customers that you looked out and saw in the service
3 area, you envisioned, remain the same for 30 years?

4 A. Yes.

5 Q. So you expected that there would be no change
6 in the customers?

7 A. Oh -- I'm sorry. We expect to buy the ones
8 that we bought, and then we would grow those.

9 Q. And when you say those that you bought, which
10 ones are you talking about?

11 A. The 17,000 customers that are in the system.
12 Generally speaking, those were inside the City. The
13 immediate, adjacent surrounding area and some of the
14 three industrial sites --

15 Q. All right --

16 A. -- with a few others.

17 Q. Which would include the Michelin site?

18 A. Yes.

19 Q. Now, with respect to the Michelin site, as you
20 were considering this transaction, what did you
21 anticipate for that site in terms of future growth?

22 A. Well, certainly the existing plant. And then
23 there was a good amount of vacant property adjacent to
24 that plant and --

25 Q. Within the Michelin site?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. Within the Michelin site, yes.

2 Q. And so when the City was calculating up the
3 allocated water capacity it would need for that site
4 from the Joint Water System, did you take into account
5 future growth?

6 A. Yes.

7 Q. All right. And, in fact, did the City
8 ultimately purchase sufficient allocated capacity for
9 the Michelin site to serve both the existing site and a
10 good bit beyond?

11 A. Yes, sir.

12 Q. Now, as part of the process of -- as part of
13 the process of negotiating the terms of the Water Sale
14 and Purchase Agreement, and for that matter the
15 transaction with Duke, did the City anticipate its
16 service area, and maps would be prepared for the City
17 and for the other members of the Joint Water System?

18 A. Absolutely.

19 Q. All right. And what was the purpose of the
20 maps, in your mind, as you understood it at that time?

21 A. First, so we would know the territory that the
22 City would be serving. And, second, we would analyze
23 the growth potential and buy the necessary capacity to
24 serve the existing and future customers.

25 Q. Do you recall who worked on the maps of the

J. MOORE -- DIRECT BY MR. GIBBES

1 service areas for the City and for the water companies;
2 what entities?

3 A. Primarily the team did, but primarily the
4 direct work was by Design South Professionals for the
5 City. And, I think, the worked in conjunction with the
6 Water Associations' representatives.

7 Q. And do you recall Mr. Beeson and Mr. Rosier
8 being involved in that?

9 A. Yes.

10 Q. And who did they -- and what did they do with
11 respect to service maps as you recall?

12 A. They actually prepared the map that was
13 presented to all parties.

14 Q. All right. And would that include Exhibit D,
15 -- what became Exhibit D to the Water Sale and Purchase
16 Agreement?

17 A. It is.

18 Q. All right. Now, let me ask you -- let me ask
19 you if there came a time in the Fall of 2001 when there
20 were uncertainty about the service area that the City
21 would be allocated or given under this -- and let me
22 ask you to look at Defendant's Exhibit 10?

23 A. Yes, sir.

24 Q. All right. Can you tell me what -- what is
25 exhibit 10?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. An email from me to Kent Guthrie regarding
2 some of the terms the City would insist on before
3 signing.

4 Q. And when you say "insist on before signing",
5 are you talking about the anticipated Water Sale and
6 Purchase Agreement?

7 A. That's correct.

8 Q. Now, I noticed you copied Margaret Pope on
9 this; is that correct?

10 A. Yes.

11 Q. And so she was already involved at this point
12 in time?

13 A. Yes.

14 Q. All right. Now, does -- does this email
15 address the question of territories?

16 A. It does.

17 Q. All right. Would you read what it says?

18 A. "Territories, need meeting with City and water
19 companies regarding this matter. It is important that
20 we resolve so that the City doesn't need to intervene
21 with Secretary of State."

22 Q. All right. Now, when you say "so the City
23 doesn't need to intervene with the Secretary of State"
24 -- that's a little vague for me anyway -- would you
25 explain what you meant by that?

J. NOORE -- DIRECT BY MR. GIBBES

1 A. In the -- moving from a private water company
2 to a political subdivision, as has been testified
3 earlier -- that it was becoming a political subdivision
4 of the State, had to be approved by the Secretary of
5 State. And part of that was, they would define their
6 boundaries.

7 Q. So why were you concerned about territories
8 and having a meeting with the water companies about it
9 at this point?

10 A. In some initial negotiations, there was
11 actually some encroachment -- not only of industrial
12 customers, but also on into the current retail area of
13 the City.

14 Q. Now, in the second paragraph of this email,
15 Ms. -- it talks -- it's titled "Value of Customers".
16 What does this -- what were you addressing here?

17 A. In -- in drawing the lines so the water
18 companies, particularly Broadway and West Anderson,
19 expressed an interest in buying some customers that
20 were currently being served by Duke Energy, that were
21 on the outskirts of the City's territory.

22 Q. Were those customers part of Duke's existing
23 retail system?

24 A. They were.

25 Q. So they were part of what the City was going

J. MOORE -- DIRECT BY MR. GIBBES

1 to purchase from them?

2 A. Yes.

3 Q. But you're saying some -- some other companies
4 like West Anderson wanted to purchase part of that if
5 you bought it from Duke --

6 A. Yes, sir.

7 Q. -- or acquired that in some fashion. All
8 right. Now, let me ask you to look at this -- this
9 email is dated November 12th. Let me ask you to look
10 at Defendant's Exhibit 11; and this appears to be an
11 email from you the following day to Mary Lou Snipes,
12 who is she?

13 A. She was the legal assistant for the City -- I
14 mean, the attorney, Bill Austin.

15 Q. All right. Now, let me ask you to take a
16 brief look at what's called -- I'm sorry -- a brief
17 look at the second paragraph -- it says, "we need to
18 discuss this issue of territories". And then it goes
19 on. What -- what was happening at this point about
20 territories that led you to write this email?

21 A. Well, as the attorney for the water company,
22 Leo Hill, was -- I'm sure -- trying to accommodate his
23 customers or his desires of the water companies to
24 acquire some additional customers, and all we were
25 going to insist on that the territory be clearly

J. MOORE -- DIRECT BY MR. GIBBES

1 defined. And if there were any customers outside that
2 territory, then -- that were part of the retail system,
3 then the water companies could purchase those.

4 Q. Okay. And I believe if you read -- I'm
5 summarizing -- if you read the second and third
6 paragraph under -- the first and second paragraph under
7 background, it indicates that work on the territorial
8 map was being done, and there was some differences in
9 the draft map that was being presented; is that
10 correct?

11 A. Yes.

12 Q. And so, would I be correct that you are asking
13 that these issues be resolved?

14 A. That's correct.

15 Q. All right. Now, at some point in time in this
16 time period, did the City offer -- actually offer West
17 Anderson the opportunity to purchase any right to serve
18 the Michelin site?

19 A. Yes.

20 Q. Or to buy the infrastructure to serve them?

21 A. That site, along with some other customers
22 available.

23 Q. Where were the other customers if they wanted
24 to look at, roughly, located?

25 A. They would have been in the yellow -- within

J. MOORE -- DIRECT BY MR. GIBBES

1 the yellow territory of West Anderson. They were very
2 close to the treatment plant on Lake Hartwell, and
3 there were several hundred that they -- they wanted to
4 purchase.

5 Q. All right. Now, to kind of put a cap on that,
6 did -- did you ultimately come to an agreement with
7 West Anderson about the purchase or the lease on those
8 customers?

9 A. We did.

10 Q. And, in fact, they paid the City a tap fee, as
11 it was called --

12 A. Yes.

13 Q. -- some kind of fee to purchase those
14 customers?

15 A. That's correct.

16 Q. And that group of customers were located
17 within Duke's existing retail territory within the West
18 Anderson Water District; is that right?

19 A. Yes, sir.

20 Q. And ultimately, West Anderson paid you monies
21 since you were buying that -- the Duke retail -- the
22 Duke retail system, and they were acquiring the right
23 to serve it?

24 A. That's correct.

25 Q. All right. Now, what -- how did West Anderson

J. MOORE -- DIRECT BY MR. GIBBES

1 respond to the City's offer to give them the Michelin
2 site to serve if they paid you for -- because you were
3 paying Duke for this site?

4 A. Our -- our -- my communication was not
5 directly with West Anderson, but through Bill Austin,
6 that they were not interested.

7 Q. All right.

8 A. In the West Anderson -- in the Michelin site.

9 Q. But did the City, in fact, offer directly or
10 indirectly to West Anderson the rights to acquire that
11 site and the infrastructure that we were purchasing
12 from Duke?

13 A. Yes. That was fine if they wanted to buy it.

14 Q. Now, did Ms. Pope, from time to time, prepare
15 drafts of the Water Sale and Purchase Agreement that
16 were circulated to the prospective members for review?

17 A. Yes.

18 Q. And who, on behalf of the City, received and
19 reviewed those drafts?

20 A. The same five or six person team I mentioned.
21 You know, I'll be glad to mention them again.

22 Q. No, that's all right. I think I got -- let me
23 just make it this simple: Did you, personally, to your
24 knowledge, review each of the drafts that were
25 circulated?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. I did.

2 Q. And did you pay particular attention to
3 certain provisions of the agreement, perhaps more than
4 others, as those drafts were circulated?

5 A. Yes.

6 Q. And was one of those provisions with respect
7 to territory?

8 A. Yes.

9 Q. All right. Let me ask you to look at
10 Defendant's Exhibit 12.

11 A. Okay.

12 Q. And I ask you if this appears to be a draft of
13 the Water Purchase Agreement -- and at the top right
14 hand corner, has Hill & Hill, which would be Leo Hill's
15 firm; and Haynsworth Sinkler Boyd, Ms. Pope's firm,
16 names on it?

17 A. It is.

18 Q. And this is dated 11/20 of '01; is that right?

19 A. That's correct.

20 Q. Shortly after the emails we've been looking
21 at, raising the question of territories?

22 A. Yes, sir.

23 Q. All right. I'm going to shortcut, with Mr.
24 Nicholson's and Ms. Spruill's permission here, there is
25 no -- the clause that West Anderson relies upon in this

J. MOORE -- DIRECT BY MR. GIBBES

1 case, is in the background section of the Water Sale
2 and Purchase Agreement. If you look at the background
3 section here, that clause is not in this document, is
4 it?

5 A. No.

6 Q. If you look back at section 6 0 4, what is
7 denominated 6 0 4 on here, but it's on page ten
8 twenty-eight -- at the bottom right hand corner -- is
9 there is a clause that addresses territorial
10 boundaries?

11 A. Yes.

12 Q. All right. And does it make reference to
13 there being a territorial map of the territory of the
14 parties?

15 A. It does.

16 Q. All right. Now, let me ask you to look at
17 Defendant's Exhibit 13, and this appears to be a second
18 version of the first draft dated 11/21/2001; does it
19 not?

20 A. It does.

21 Q. Do you see any -- there is no clause in the
22 background section relating to Michelin; is there?

23 A. No.

24 Q. All right. And if you turn back in this
25 agreement -- it's actually section 7 0 2 on page 1562.

J. NOORE -- DIRECT BY MR. GIBBES

1 A. Okay.

2 Q. There is a section 7 0 2, territorial
3 boundaries that is generally similar to the one that
4 was in the prior draft; is that correct?

5 A. That's correct.

6 Q. It makes reference to a territorial map of the
7 territories of the parties and the service areas?

8 A. Yes.

9 Q. Now, as these drafts were being circulated,
10 did you -- and the City would comment when appropriate?

11 A. Yes.

12 Q. Write comments?

13 A. Yes.

14 Q. All right. At or about this time, was the
15 question resolved of who would service the Michelin
16 site, the BASF site, and the Owens Corning site?

17 A. It was still up for consideration.

18 Q. All right. But did the parties at some point
19 come to an agreement about who would serve those sites?

20 A. Yes.

21 Q. And let me ask you to look at Defendant's
22 Exhibit 17.

23 A. Okay.

24 Q. What is Defendant's Exhibit 17?

25 A. A letter to Mr. John Stathakis and Mr. Steven

J. MOORE -- DIRECT BY MR. GIBBES

1 Potts, attorneys from Starr-Iva and West Anderson
2 respectively, from the City attorney Frankie McClain.

3 Q. All right, sir. And what does paragraph one
4 address?

5 A. Some of the outstanding service areas. Number
6 one, for example, the City will serve BASF and Owens
7 Corning Fiber Glass as retail customers.

8 Q. All right. Now, had the City made a similar
9 offer to Starr-Iva to let them acquire the rights to
10 serve those two sites at some point in the past?

11 A. Yes, and it was generally a part of this
12 letter, too.

13 Q. All right. And by that time, the agreement
14 was the City would serve those two sites?

15 A. Very close.

16 Q. All right. And then --

17 A. And you indicated --

18 Q. If you look at paragraph 5, what does that
19 reflect?

20 A. "The City will serve the Michelin plant, which
21 is located in the West Anderson District. The City
22 will not utilize the 24 inch line to serve any other
23 customers in the West Anderson Water District."

24 Q. All right. And when you -- when this letter
25 -- as you understand this letter, when it refers to the

J. MOORE -- DIRECT BY MR. GIBBES

1 other customers in the West Anderson Water District,
2 you're talking about the entire -- this yellow; are you
3 not?

4 A. That would be correct.

5 Q. All right. So, would it be consistent with
6 your recollection that by the time of this December 7th
7 letter from Mr. McClain to Mr. Potts and Mr. Stathakis,
8 the attorneys for West Anderson and Starr-Iva, that the
9 parties were close to an agreement that the City would
10 provide service to these three sites?

11 A. Yes.

12 Q. All right. Now, let me ask you to turn to
13 Defendant's Exhibit 18. And this is an email dated --
14 from yourself, dated December 12, 2001, about a week
15 after the letter we were just looking at on the list.
16 If you turn to the second page -- I'm sorry, the bottom
17 of the first page -- it states, quote, "now, let's go
18 back to the issues between the City and you,
19 representing the Anderson County Joint Municipal Water
20 System" -- that's as, -- Kent Guthrie; is that right?

21 A. Kent Guthrie and William McCoy -- well, that
22 -- excuse me -- Henry -- I'm drawing a blank --

23 Q. Payne?

24 A. Henry Payne, yes, sir.

25 Q. From Duke. Kent Guthrie, at this point, was

J. NOORE -- DIRECT BY MR. GIBBES

1 one of the chief negotiators for Anderson County Water
2 System, right?

3 A. Yes.

4 Q. So at the bottom of page one, you say, quote,
5 "now, let's go back to the issues between the City and
6 you, representing the Anderson County" -- by then --
7 "Joint Municipal Water System, these are the issues
8 that are preventing the City from closing. Again,
9 these are the following" -- and what is the second
10 bullet point?

11 A. The territories, especially where West
12 Anderson and the city border --

13 Q. Now, you're referring to this area up here
14 where these three to four hundred taps were located?

15 A. Actually there was more than that. Again, the
16 -- West Anderson was trying to extend their territory
17 to the 28 bypass, which is well within the orange area
18 that the City serves now.

19 Q. So, is it fair to say that as of the date of
20 this email, there was still disagreements about the
21 extent of the City's service area and West Anderson?

22 A. Yes.

23 Q. All right. And back in your paragraph, on
24 page 2, that's marked second -- or starting second --
25 you address the issue of those taps in that boundary

J. MOORE -- DIRECT BY MR. GIBBES

1 area; is that correct?

2 A. That's correct.

3 Q. All right. Now, let me ask you to turn to
4 Defendant's Exhibit 19, and this is marked the 5th
5 draft of the Water Sale and Purchase Agreement dated
6 December 15, 2001; is that correct?

7 A. Yes.

8 Q. All right. Now, if you turn to page 2 of this
9 agreement, does the clause relating to BASF, Owens
10 Corning and Michelin appear at the bottom of page 2 and
11 the top of page 3 for the first time?

12 A. It does.

13 Q. All right. And without comparing it verbatim
14 to the one that's actually in the Water Sale and
15 Purchase Agreement, is it safe to say it's fairly close
16 to it; is that correct?

17 A. Yes.

18 Q. And to your knowledge, this is the first time
19 that clause appeared?

20 A. That's correct.

21 Q. All right. Now, I would ask you to turn back
22 to section 6, and quickly -- turn back to section 6 and
23 thumb through section 6, and ask -- and tell me if you
24 see a clause dealing with territorial boundaries of a
25 territorial map?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. Not in section 6.

2 Q. All right. To the best of my knowledge -- I
3 think it's correct -- the clause that had been in the
4 paragraphs called "territorial boundaries", referring
5 to the territorial map, has been deleted from this
6 draft; is that correct?

7 A. Yes.

8 Q. All right. Did that concern you?

9 A. Very much.

10 Q. All right, sir. What action did you take to
11 address it?

12 A. We basically told them that we would -- we
13 told Kent and Henry, and the others, that we would not
14 be a party or close on the deal without the territorial
15 maps.

16 Q. And, in fact, did City Council take steps to
17 pass a resolution addressing that concern?

18 A. Yes.

19 Q. All right. Let me ask you to turn to
20 Defendant's Exhibit 20; and ask you if this is a copy
21 of City Resolution 01-08?

22 A. It is.

23 Q. And what, generally, is the subject matter of
24 this resolution?

25 A. It specified that council would need these

J. MOORE -- DIRECT BY MR. GIBBES

1 issues resolved prior to their closing, and we listed
2 seven or eight of them.

3 Q. All right. And if you look at item C, would
4 you just read that into the record, please?

5 A. "The provisions of the Water Purchase
6 Agreement regarding territorial maps defining the
7 purchaser's system, defining the system's purchase
8 water costs and master meter requirements must be
9 amended as proposed by the City."

10 Q. And was that provision included in this
11 resolution to the best of our knowledge in response to
12 the latest draft of the agreement, which deleted the
13 territorial boundary section in part?

14 A. You've got to repeat that one for me.

15 Q. Well, the territorial boundaries section had
16 been deleted from the last draft you had seen in the --

17 A. Yes.

18 Q. -- Water Sale and Purchase Agreement; is that
19 correct?

20 A. Yes.

21 Q. And was this included in the resolution in
22 response to that?

23 A. It had to go back in, correct.

24 Q. Now, following the City's resolution on
25 December -- it looks like -- 17th of 2001, was there a

J. MOORE -- DIRECT BY MR. GIBBES

1 meeting, between the City and the negotiators for the
2 Anderson County Joint Municipal Water System -- the
3 water companies?

4 A. Yes.

5 Q. All right. When did that meeting occur -- and
6 let me ask you to look at -- that's not a fair
7 question. Look at Defendant's -- admitted -- 21, and
8 ask me -- tell me when that meeting occurred; December
9 27, 2001?

10 A. There was a summary of the negotiations,
11 that's correct.

12 Q. All right. Now, how would you describe the
13 tenor of the negotiations between the City and the
14 water companies as it related to the Water Sale and
15 Purchase Agreement at this time?

16 A. They were fairly contentious.

17 Q. Okay. And so a meeting was held, did you
18 attend that meeting?

19 A. I did.

20 Q. And did Mayor Shirley attend?

21 A. I'm not certain -- for sure.

22 Q. And who, to your recollection, attended on
23 behalf of the water companies?

24 A. At least Kent and Henry and William, and
25 probably a few others -- a few on their team.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. Now, this document is captioned as a summary
2 of that meeting; who prepared this document?

3 A. I did.

4 Q. All right. And what was your purpose in
5 preparing the document?

6 A. To put into writing, for their consideration,
7 the terms that the City would require to be --

8 Q. So these were, basically, open issues that
9 affected the terms of this entire transaction?

10 A. Yes.

11 Q. If you look at paragraph 1-c on page 2, it's
12 captioned Water Purchase Agreement; does that have to
13 do with the draft purchase agreement that was being
14 circulated and negotiated?

15 A. It did.

16 Q. All right. And would you read the first two
17 or three sentences under that, where it begins "final
18 City".

19 A. "Final City position: City wants territorial
20 map attached to the agreement. City wants wording
21 acknowledging City territory to be respected by water
22 companies" -- and in parentheses -- "Margaret Pope and
23 Leo Hill to draft that work -- to draft wording".

24 Q. Read the next sentence, too.

25 A. "City wants reference to its Assets Purchase

J. MOORE -- DIRECT BY MR. GIBBES

1 Agreement with Duke."

2 Q. All right. And when you say that, or when you
3 wrote that, or when you said that at the meeting, what
4 did you want them to do about the Asset Purchase
5 Agreement with Duke?

6 A. To include the territorial maps and
7 acknowledgment by the water companies.

8 Q. Okay. Now, what response did the City receive
9 from the Anderson County Water System about including
10 -- putting the territorial map back in the agreement?

11 A. They agreed.

12 Q. All right. Let me ask you to look -- I'm
13 sorry. Did you provide a copy of your summary,
14 Defendant's Exhibit 21, to anybody outside of the City?

15 A. Duke, Duke Energy.

16 Q. All right. How about the Water Association?

17 A. Oh, I'm sorry, yes. It was actually directly
18 to them. There is a summary for Kent Guthrie and his
19 team to review.

20 Q. So once you prepared your summary, you
21 provided it to the --

22 A. Absolutely --

23 Q. To the Water Association and to Duke?

24 A. Absolutely.

25 Q. Did they provide you with a summary in

J. MOORE -- DIRECT BY MR. GIBBES

1 response?

2 A. They did.

3 Q. Let me ask you to look at Defendant's Exhibit
4 22. Is this -- is this the response?

5 A. It is.

6 Q. And it looks like they have matched their
7 response to the paragraph numbers of the issues in your
8 document; is that correct?

9 A. Pretty close.

10 Q. All right. And let me ask you to look at 1-C
11 and read what they wrote about the -- your request on
12 territorial maps and so forth?

13 A. "The territorial map will go back in the
14 agreement. Billing/meter questions, hope to resolve in
15 future discussions on whether the City will pay for its
16 master meters."

17 Q. All right. So at the conclusion of that
18 meeting, what was your understanding of the parties'
19 agreement about the inclusion of a territorial map in
20 the agreement that was being negotiated --

21 A. They were being included.

22 Q. All right. Let me ask you to turn to exhibit
23 20 -- Defendant's Exhibit 23. And this appears to be a
24 document -- a draft of the Water Sale and Purchase
25 Agreement marked 6th draft, January 17, 2002. And if

J. MOORE -- DIRECT BY MR. GIBBES

1 you turn to page 2, at the bottom, you will find a --
2 what appears to be a similar or fairly similar clause
3 relating to the three sites in the background section;
4 is that correct?

5 A. That's correct.

6 Q. All right, sir. So that clause was carried
7 forward?

8 A. Yes, sir.

9 Q. And then if you turn over to paragraph -- it's
10 back in section 6 0 2 on page 2672 -- do you find
11 section 6 0 2 "Territorial Boundaries" back in the
12 agreement?

13 A. It is.

14 Q. All right. And does it basically, again, make
15 reference to a territorial map that would be attached?

16 A. A territorial map that the parties had agreed
17 upon.

18 Q. All right. And in this particular draft, in
19 January of 2002, section 6 0 2 "Territorial
20 Boundaries", which is misspelled -- it says "in order
21 to successfully plan and finance additions to their
22 respective systems, and to avoid future disputes, the
23 parties have agreed upon a territorial map of the
24 territories of the parties to this agreement, in order
25 to set out the areas each intends to serve." Does that

J. MOORE -- DIRECT BY MR. GIBBES

1 language, in this draft, fairly reflect in your mind,
2 as you understood it, the oral agreement the parties
3 came to at the meeting on or about December 27th?

4 A. It does.

5 Q. All right. Now, very briefly, if you look at
6 exhibit 24, it's a 7th draft dated February 28, 2002.
7 And if you look at page 2, it's got the same clause in
8 the background section relating to the Michelin and
9 BASF and Owens Corning. And then if you turn to six --
10 I think it's 6 0 2 still -- yes -- and -- you find the
11 section 6 0 2 territorial boundaries clause; do you
12 not?

13 A. Yes.

14 Q. On page 2331?

15 A. Yes.

16 Q. And I believe if you compare this side by side
17 to the last draft, the only thing this did is correct
18 the spelling of "boundaries", is -- you can take my
19 word for that.

20 A. It seems to be.

21 Q. Now, I want to ask you to turn -- well, let me
22 ask this question: By or about this time, and toward
23 the end of January of 2002, were the parties -- and by
24 that, I mean Duke and the City and the Water
25 Association -- getting fairly close to an agreement on

J. MOORE -- DIRECT BY MR. GIBBES

1 both the purchase of Duke's assets by the City and the
2 Water Association, and the terms of the Water Sale
3 Purchase Agreement?

4 A. Yes.

5 Q. All right. Let me ask you to turn to
6 Defendant's Exhibit 26; and ask you if this appears to
7 be the Second Amendment to Asset Purchase Agreement
8 dated February 20, 2002?

9 A. It does.

10 Q. All right. And this, again, is an agreement
11 between Duke, the Joint Water System, West Anderson and
12 other, but the City is not a party to this agreement,
13 is it?

14 A. No.

15 Q. All right. Now, if you turn to -- in your
16 meeting on December 27th, in the summary of
17 negotiations we looked at, one of the things you asked
18 was the Water Association makes reference to the City's
19 agreement with Duke, the Asset Sale Agreement in its
20 own agreement; isn't that correct?

21 A. Yes, absolutely.

22 Q. All right. If you'll turn to page 2 -- I'm
23 sorry -- section 2.2 on the next page, did Duke and the
24 Water Association do as you requested?

25 A. They did.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. In fact, in section 2.2, Conveyance to City of
2 Anderson -- the purchase of that would be Joint Water
3 System and the water companies acknowledge that the
4 seller" -- that's Duke -- "intends to enter into an
5 Asset Sale Agreement, dated as of the date hereof, with
6 the City of Anderson, conveyed directly to Anderson
7 those assets described in Exhibit A, retail assets for
8 a purchase price of \$15,580,000"; is that correct?

9 A. That is correct.

10 Q. Okay. Was the purchase of \$15,580,000 a
11 considerable amount for the City of Anderson?

12 A. It certainly was.

13 Q. Okay. Now, if you turn to -- we've looked at
14 it many times, I think, but schedule 1 -- I'm sorry --
15 Exhibit A, which is on page 179.

16 A. Okay.

17 Q. This is a listing in their agreement of the
18 retail assets the City was purchasing from Duke; is
19 that correct?

20 A. That's correct.

21 Q. Why did you want this reference in their
22 agreement to which the City was not a party?

23 A. In particular, about the lines that were going
24 out to serve those industrial sites and the industrial
25 sites.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. Now, let me ask you to turn to schedule 1 to
2 Exhibit A, which is page 181. And the first sentence
3 says "The retail mains and pipes located within the
4 retail service area, as shown in gray on the attached
5 map, and as described below." When it refers to retail
6 service areas as shown on the attached map -- let me
7 ask you to turn over a few pages to page 184. And ask
8 you, whose retail service area is shown on that map?

9 A. The City of Anderson.

10 Q. All right. And does it show the Michelin site
11 as part of the City's retail service district?

12 A. It does.

13 Q. And if you go back to page 181, the service
14 area boundary description, whose boundary is that
15 describing?

16 A. The City of Anderson's.

17 Q. And if you look on the second page of that, on
18 page 182 about midway down, does it make reference to
19 the Michelin site, and in what words?

20 A. "Michelin property".

21 Q. "Michelin plant property."

22 A. Plant property.

23 Q. All right. So in your December 27th meeting
24 with the Anderson County Water Association people, or
25 their negotiators, you had asked that they reference

J. MOORE -- DIRECT BY MR. GIBBES

1 your -- the City's agreement with Duke to buy the
2 retail system, and you had asked that they respect your
3 territory; is that correct?

4 A. That would be correct.

5 Q. And did you view all of this as part of their
6 effort to accommodate the City's request?

7 A. Yes.

8 Q. Now, let me ask you to refer -- turn to
9 exhibit 27 -- Defendant's Exhibit 27, and this document
10 is dated the same date as the document we just looked
11 at; is that correct?

12 A. Yes, it is.

13 Q. And what is this document?

14 A. It's an Asset Sale Agreement between Duke
15 Energy Corporation and the City of Anderson.

16 Q. Okay. And if you look in this agreement at,
17 again, schedule 1 --

18 A. Do you have a page for that?

19 Q. Which is on page 121 -- I'm sorry -- I get
20 ahead of myself. You're looking at Exhibit A on page
21 120?

22 A. Yes.

23 Q. It contains a listing of the retail assets
24 that the City is purchasing from Duke; is that correct?

25 A. Yes, it does.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. All right. And to the best of your knowledge,
2 without doing a line by line comparison, is this the
3 same as the retail assets that was included in the
4 Water Association's second amendment with Duke?

5 A. It is.

6 Q. All right. And if you turn to page 121, there
7 is a schedule 1 to Exhibit A, that has a service area
8 boundary description; and to the best of your knowledge
9 is that also the same one that was included in their
10 second amendment?

11 A. It is.

12 Q. All right. And if you look at the map that's
13 attached on -- two pages over -- three pages -- Bates
14 number 436 at the top, is that the same map?

15 A. It is.

16 Q. Now, who prepared that map?

17 A. This map was prepared by Design South
18 Professionals.

19 Q. And what -- in the bottom right hand corner,
20 what is -- does it refer to?

21 A. Map to Exhibit A, Asset Sale Agreement.

22 Q. And the next block over, what does it title
23 the map?

24 A. Oh, "Service Area Map, Retail Water System,
25 City of Anderson."

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. At the time the City entered into its Asset
2 Sale Agreement with Duke, February 20, 2002, what --
3 was it your understanding that the gray area shown on
4 this map would be the City's retail service area that
5 would serve under this overall agreement?

6 A. It was.

7 Q. All right. Was this map also a part of your
8 efforts to confirm the territory the City was -- that
9 everybody was agreeing the City would serve?

10 A. Absolutely.

11 Q. In fact, this same map is included as an
12 exhibit to their second amendment; is it not?

13 A. That's correct.

14 Q. All right. Now, let me ask you to go to
15 exhibit -- Defendant's Exhibit 29, which is the Water
16 Sale and Purchase Agreement, and out of an abundance of
17 caution, if you look at page 258, this is some of the
18 signatures -- executed signatures on this agreement, is
19 that correct?

20 A. Yes, sir.

21 Q. And one of -- one of the signatures was that
22 of the City of Anderson?

23 A. It is.

24 Q. And who signed on behalf of the City and in
25 what capacity?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. Mayor Richard Shirley and myself, as City
2 Manager.

3 Q. All right. And for completeness, if you turn
4 over to the -- two pages over -- do you find a
5 signature block for West Anderson Water District?

6 A. I do. Mr. Toddy Hopkins.

7 Q. All right. And it indicates his capacity as
8 chairman?

9 A. Chairman.

10 Q. To the best of your knowledge, is this a copy
11 of the final executed Water Sale and Purchase
12 Agreement?

13 A. It is.

14 Q. All right. Now, if you look at page 221, this
15 is part of the section captioned Background and
16 Findings -- the paragraph that was introduced midway
17 through these drafts, roughly, that refers to the BASF
18 and Owens Corning site, and then the industrial
19 facilities of Michelin is included in here; is that
20 correct?

21 A. It is.

22 Q. All right. And were you aware that that
23 clause was still in the agreement when you signed the
24 agreement?

25 A. Absolutely.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. And then if you turn over to section 6.02 -- I
2 think -- on page 254, do you find the territory
3 boundaries section there?

4 A. I do.

5 Q. And is the wording of it virtually identical
6 to the wording that we went over in the prior draft?

7 A. It is.

8 Q. And does it make reference to an attached
9 territorial map, Exhibit D?

10 A. Yes.

11 Q. And if you turn over to the very last page of
12 this document, it is a copy of Exhibit D -- a non
13 colored copy, a black and white copy attached?

14 A. Yes.

15 Q. And to the best of your knowledge and belief,
16 is that the same as the colored version?

17 A. It is.

18 Q. That is blown up in court. Based upon your
19 involvement in the negotiations for this Water Sale and
20 Purchase Agreement on behalf of the City, what was your
21 understanding of the extent of the City's right to
22 serve the entire area that is shown in orange on
23 Exhibit D?

24 A. The City had full rights to serve existing and
25 future customers in the orange area.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. And would that include a -- what we referred
2 to as the Michelin site?

3 A. Yes, sir.

4 Q. And, in fact, in your planning and preparation
5 to become a member of the Joint Water System, and in
6 consideration -- I think you have already testified to
7 this -- the territory that the City would be given
8 to serve, it was important for the City to have it well
9 defined so you could -- so you could determine the
10 number of customers you would have presently and in the
11 future, and buy specifically allocated capacity to
12 serve them; is that right?

13 A. That, as well as recovering the costs of that
14 line that the City invested in.

15 Q. Okay. In fact, in the case of the Michelin
16 site, did you know how much allocated capacity the City
17 initially received for the site?

18 A. I have seen it. I can't recall it.

19 Q. If you look at Defendant's Exhibit 15?

20 A. Fifteen.

21 Q. Fifteen -- in the other book.

22 A. I'm sorry. You lost me in that one.

23 Q. If you'll turn to Defendant's Exhibit 15, and
24 the first note.

25 A. Okay.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. Would you tell me what this says?

2 A. An email from Kent Guthrie to me regarding
3 DHEC and allocations.

4 Q. All right. And it's dated December 2, 2001?

5 A. Yes.

6 Q. And if you look at the first -- I mean, the
7 second paragraph, does it make reference to capacity
8 for the new Michelin plant?

9 A. It does.

10 Q. All right. And that's point -- is it point
11 five five fifty -- I can't read it --

12 A. Um --

13 Q. Let me ask this question -- more simple -- at
14 the time the City purchased -- let me try again -- at
15 the time the City entered into these transactions back
16 in 2002, did the City, in fact, acquire allocated
17 capacity for the Michelin site, that exceeded the needs
18 of the new plant that was in existence?

19 A. It did, yes.

20 Q. And did the City continue to have excess
21 capacity that it was paying the Joint Water System for,
22 for that site, after the new plant went into operation?

23 A. After the new plant?

24 Q. Yes.

25 A. Yes.

J. MOORE -- DIRECT BY MR. GIBBES

1 Q. Now, there has been some testimony in this
2 court on behalf of West Anderson that if the existing
3 facility, the old facility of the Michelin plant burned
4 down a month after you closed this transaction, that
5 West Anderson would object to the City serving the
6 rebuilt facility?

7 A. Yes.

8 Q. And had you known that that was a term of this
9 agreement, would you have permitted the City to do this
10 deal?

11 A. No.

12 Q. Let me ask you this: Did anyone, during the
13 period we've been talking about at any point, back in
14 the period before the Water Sale and Purchase Agreement
15 was signed, from West Anderson, come to either you or
16 anybody else associated with the City, to your
17 knowledge, and advise them that they intended to limit
18 your right to serve the Michelin site to just the
19 existing building?

20 A. Absolutely not.

21 Q. When was the first time you learned that that
22 was their position?

23 A. When the second plant was under consideration,
24 about to be announced.

25 Q. In 2012 or so?

J. NOORE -- DIRECT BY MR. GIBBES

1 A. Somewhere along that line.

2 Q. All right. Now, I've got the documents in the
3 record -- but do you recall that the Water Sale and
4 Purchase Agreement was amended several times -- or
5 restated after it was executed in 2002 -- and let me to
6 do this -- I don't want to confuse you. Look at
7 Defendant's Exhibit 32 -- I'm sorry -- 33.

8 A. Okay.

9 Q. Was the City a party to this agreement?

10 A. It is.

11 Q. And do you generally recall there was such a
12 restated and amended agreement in 2004?

13 A. I do.

14 Q. And then let me ask you to look at Defendant's
15 Exhibit 35, and ask you if you have some recollection
16 that there was a first amendment to that restated
17 agreement in 2005?

18 A. I'm aware of that document, yes.

19 Q. And then if you look at Defendant's Exhibit
20 36, was there something called a First Supplement to
21 the Restated Amended Water Sale and Purchase Agreement?

22 A. It was.

23 Q. Dated December of 2005?

24 A. It was.

25 Q. Was the City a part of that document?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. It was.

2 Q. And, in fact, the subject of this last
3 document and perhaps is -- there was an expansion of
4 the Joint Water System water plant; is that right?

5 A. That's correct.

6 Q. And the plant was expanded to provide
7 additional capacity to the members?

8 A. Yes.

9 Q. And did the City, in fact, acquire some of
10 that additional capacity?

11 A. It did.

12 Q. And they agreed to pay for it?

13 A. Yes.

14 Q. All right. To the best of your knowledge, by
15 the time these 2004 and 2005 agreements were executed,
16 to the best of your knowledge by that time, had there
17 been a change of ownership of the BASF site, and the
18 parties stipulated for the record that there was a --
19 BASF sold the site to Honeywell on April 29, 2003
20 before the date of these agreements?

21 A. I was familiar they sold it to Honeywell, yes.

22 Q. To the best of your knowledge, did West
23 Anderson or any other members come to the City and say
24 we need to amend the Water Sale and Purchase Agreement
25 to change that clause that appears in the background

J. MOORE -- DIRECT BY MR. GIBBES

1 section?

2 A. It did not.

3 Q. Now, let me ask you to turn to Defendant's
4 Exhibit 39 -- I'm sorry. I apologize. I withdrew that
5 one, but you can look at it. Let me ask you to turn to
6 Defendant's Exhibit 40.

7 A. Okay.

8 Q. And somewhere around the time of this letter,
9 which is June 11, 2012, were you aware that West
10 Anderson was taking steps to try to serve the new
11 facility at Michelin?

12 A. I was aware of that.

13 Q. All right. And is this a letter from the
14 City's attorney, Mr. McClain, to Steve Wilson, the
15 manager at West Anderson about that?

16 A. Yes, it is.

17 Q. All right. And before the City attorney, Mr.
18 McClain, sent this letter to Mr. Wilson, did you have
19 someone call Mr. Wilson?

20 A. We did.

21 Q. All right. And who did you instruct to call
22 him?

23 A. I believe it was Jeff Caldwell.

24 Q. And what was the purpose in having him call
25 before the letter went?

J. MOORE -- DIRECT BY MR. GIBBES

1 A. Just to let him know that the Michelin plant
2 was in the City's service area, and we did not want
3 them interfering with the contract negotiations that
4 were underway with the City and Michelin.

5 Q. And Mr. McClain sent this letter as a
6 follow-up?

7 A. Yes, sir.

8 Q. And I'm not going to ask you to read the
9 letter, but does the City set forth -- I'm sorry -- the
10 letter, Exhibit 40, basically set forth the City's
11 position on the proper interpretation of the Water Sale
12 and Purchase Agreement?

13 A. It did.

14 Q. Did the -- and did West Anderson respond to
15 the City's letter -- and let me ask you to look at
16 Defendant's Exhibit 41.

17 A. They did.

18 Q. All right. And basically said they disagreed
19 with you?

20 A. Correct. Yes.

21 Q. And here we sit today?

22 A. Yes.

23 Q. Now, over the course of time, from 2002 to the
24 present, did the City incur initial and subsequent
25 expense to be in a position to serve any new facility

J. MOORE -- DIRECT BY MR. GIBBES

1 that Michelin might put on the Michelin site?

2 A. We did.

3 Q. All right.

4 A. The City did.

5 Q. And is there any provision in the Water Sale
6 and Purchase Agreement that addresses how the City
7 would be reimbursed for that expense if somebody else
8 had the right -- was given the right to serve that
9 site? There's not, is there?

10 A. I would think so, not that I recall.

11 Q. Should the court award West Anderson the right
12 to serve the new facility at Michelin, has the City
13 filed a counterclaim asking that West Anderson be
14 required to reimburse it for --

15 A. It has.

16 Q. -- those costs?

17 A. It has, yes.

18 Q. And have you had someone calculate the amount
19 of those expenses?

20 A. The City has.

21 Q. All right. And who has done that?

22 A. Jeff Caldwell, our utilities director.

23 MR. GIBBES: Your Honor, could I have just a
24 minute?

25 THE COURT: Yes, sir.

J. MOORE -- CROSS BY MR. NICHOLSON

1 (Pause.)

2 MR. GIBBES: Your Honor, I think that's all the
3 questions we have for Mr. Moore.

4 THE COURT: All right.

5 MR. GIBBES: Thank you.

6 THE WITNESS: Thank you.

7 MR. NICHOLSON: May it please the court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION BY MR. NICHOLSON:

11 Q. Mr. Moore, good afternoon.

12 A. Good afternoon.

13 Q. I believe we've met several times before.

14 A. We have. We've always had a pretty good time,
15 I think.

16 Q. Mr. Moore, I'm going to ask you a few
17 questions about the Michelin contact -- if you look at
18 Defendant's Exhibit No. 3?

19 A. I have it.

20 Q. Okay. Now, this agreement was signed between
21 Duke and Michelin July 3, 2002; yes?

22 A. Yes.

23 Q. And I believe this was a -- the term expired
24 sometime July 2000 -- 2010; correct?

25 A. It was ten years, correct.

J. MOORE -- CROSS BY MR. NICHOLSON

1 Q. Ten year agreement. And at the expiration of
2 that agreement, it really -- it wasn't really formally
3 renewed for -- a little over four years, right?

4 A. That's correct.

5 Q. In fact, you just -- on August 8th, last week,
6 is when you finally got the contract for the existing
7 Michelin plant renewed; correct?

8 A. Yes. The new contract, yes.

9 Q. Okay. And look at -- I believe I'm right --
10 Mr. Gibbes sent this over -- it must have been the
11 minute it was signed. We got it that day, he
12 supplemented. If you look at Defendant's 48. It's in
13 the second one, I believe.

14 A. Okay.

15 Q. Is this -- is this the contract that relates
16 to the existing -- what we've been calling the existing
17 Michelin facility that was built back in the early
18 2000s?

19 A. This is actually the existing and the new.

20 Q. Well, let's -- let's -- let's look at exhibit
21 49. We've got two contracts.

22 A. Okay. I'm sorry. Yes. This is the -- let me
23 look and be sure -- I'll take your word for -- it is
24 for the existing --

25 Q. I represent to you that your counsel --

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. Yes.

2 Q. -- Exhibit 48 was for the existing, and
3 Exhibit 49 was the new contract?

4 A. Yes.

5 Q. Is that right?

6 A. That's correct.

7 Q. And Exhibit 48, which is the existing
8 contract, that references service of an 8 inch meter;
9 is that right?

10 A. It does.

11 Q. And the new facility, the new facility that's
12 been -- when did that get finished? When did that
13 facility get finished?

14 A. I went to the ribbon cutting, but I forgot.
15 Probably 2013.

16 Q. Okay. Sometime in 2013. It started --

17 A. Maybe early '14.

18 Q. Okay. Yeah, it started sometime in 2012,
19 maybe even 2000 and -- I can't remember. But it
20 finished -- it finished in the last couple of months
21 give or take?

22 A. Yes.

23 Q. All right. And so we all know we're calling
24 it the new facility. And you have a separate contract
25 for the plant; yes?

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. Yes.

2 Q. And that's -- we've established that's exhibit

3 49. And that has a separate meter; correct?

4 A. It does.

5 Q. And that's a 10 inch meter; right?

6 A. Correct.

7 Q. Okay. And whereas the agreement that you had
8 -- or the agreement that was between Duke and Michelin
9 for the existing plant, that was assigned to you all,
10 that was a ten year agreement; right?

11 A. That's correct.

12 Q. And these agreements are five year terms;
13 right?

14 A. Yes.

15 Q. Okay. And I have looked through these, and
16 the court can look through them as well, but it looks
17 like to me that neither agreement references the other;
18 would you agree with that?

19 A. That's probably correct.

20 Q. Okay. I believe that you talked about with --
21 with -- with Mr. Gibbs, you talked about the
22 purchasing of capacity; do you remember that?

23 A. Yes.

24 Q. Okay. Let's go back to exhibit 15 that you
25 all were looking at.

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. Okay.

2 Q. All right. Mr. Gibbs directed you to the
3 second paragraph of exhibit 15 -- and for the record,
4 it's page 62 -- and this is from Kent Guthrie to you,
5 it's dated December 2, 2001; right?

6 A. That's correct.

7 Q. Okay. So it's -- it's getting close to when
8 the water asset -- when the Water Sale Agreement was
9 signed?

10 A. It is.

11 Q. Okay. And so -- it says, the allocation
12 Margaret Pope sent out last Friday is based strictly on
13 Duke's -- I guess current year -- 2000 flow numbers as
14 I was given them with two exceptions. Okay. First it
15 says -- now, do you think that says .55 million gallons
16 per day?

17 A. I believe it does.

18 Q. Fifty-five million gallons a day would be --

19 A. A lot.

20 Q. That would be a lot --

21 A. It would be more than our capacity.

22 Q. That's right. It would be more than our
23 capacity. So we can all agree that it's .55 --

24 A. Yes.

25 Q. -- million gallons a day was added to the City

J. MOORE -- CROSS BY MR. NICHOLSON

1 of Anderson as a projection of the new Michelin plant?

2 A. Yes.

3 Q. Okay. And, again, when it says "new Michelin
4 plant", at the time they're talking about the existing
5 Michelin plant?

6 A. Correct.

7 Q. Okay. Now, the next sentence there --
8 skipping over -- says "the Michelin number is based on
9 info that Norb Steeber obtained from Michelin,
10 indicated a range of usage up from 150 million to 300
11 million" -- is that gallons per year?

12 A. Yes.

13 Q. Okay. Now, I'm going to represent to you I've
14 done a little math, and I'm -- I'm a Humanities major
15 from Carolina, so that's a dangerous thing -- when I
16 say Carolina, I mean the University of South Carolina
17 -- I think everybody knows that, but -- but so that's a
18 dangerous thing when we -- when we -- when I do math,
19 but I -- it's -- if we're calculating it on millions of
20 gallons a -- per day, if we take the 150 million
21 gallons per year, and divide it by 365, that comes out
22 to about a little over point four million gallons a
23 day.

24 A. Okay.

25 Q. Okay. And we can all get our calculators and

J. MOORE -- CROSS BY MR. NICHOLSON

1 do it.

2 A. I trust you.

3 Q. And if we do 300 million gallons per year,
4 that calculates to something around point eight two
5 million gallons a day?

6 A. Okay.

7 Q. Okay. I'm just -- I understand you trust me
8 and I appreciate it. What got allocated was somewhere
9 in that lower range, then apparently, of .55 million
10 gallons a day, right, according to this email?

11 A. Yes. According to the email:

12 Q. Now, in -- we -- and I'm happy to let you look
13 at these if you want. But we -- we -- you said you've
14 got a damages claim?

15 A. Yes.

16 Q. Correct -- and I'm not going to ask you what
17 you're claiming right now -- and I understand Mr.
18 Caldwell is going to do that -- but in connection with
19 your claim for damages, we -- we submitted some
20 interrogatories to you all; do you remember that?

21 A. Yes.

22 Q. And one of the things we asked you was what
23 was some of the elements of -- where some damages would
24 come from. And one of the things you noted in talking
25 about some monies you had spent -- and it related to

J. MOORE -- CROSS BY MR. NICHOLSON

1 monies you had spent for -- related to the Michelin
2 plants; correct?

3 A. Correct.

4 Q. Okay. And in one of the things -- one of the
5 numbers that you gave was for the Michelin plant
6 capacity, and I think that was for the old Michelin
7 plant. And the number that was given there was a
8 little over 900,000 -- it was 932,431; do you remember
9 that? Let me show it to you. It says that "The
10 Defendant incurred costs of acquiring the necessary
11 infrastructure to serve the Michelin site from Duke
12 Energy, in purchasing potable water capacity to serve
13 the site from the system, and upgrading the existing
14 water systems to serve the Michelin site as follows" --
15 and I believe it had here -- it says, "Michelin plant
16 capacity 932,431." Okay. I believe that your -- what
17 your testimony was before, that that capacity was for
18 the Michelin I site, the existing facility?

19 A. That would be correct.

20 Q. Okay. And then you also put down some
21 capacity for expansion capacity -- do you see number --
22 item F?

23 A. Yes.

24 Q. And I believe you said that was for any future
25 expansion that you may need for Michelin?

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. It could be for --

2 Q. Okay. That number there is 64,102.

3 A. Okay.

4 Q. Okay. Toward the end of your testimony with
5 Mr. Gibbes, you talked about -- you talked about the
6 nature -- what you believe the nature of your purchase
7 of -- the nature of your rights to this area?

8 A. Yes.

9 Q. Okay. That's the orange right -- the orange
10 area that's within the yellow West Anderson area, just
11 for purposes of the record; is that right?

12 A. Okay.

13 Q. And for further purposes of the record, I'm
14 looking at Plaintiff's Exhibit 20 I believe. And so I
15 think what you told Mr. Gibbes was that -- that the --
16 the rights you acquired with respect to the area we
17 looked at, were to serve future and -- serve current
18 and future customers --

19 A. Yes.

20 Q. -- correct -- and your stance on that is --
21 regardless of whether it's Michelin or not -- right?

22 A. That's correct.

23 Q. So Caterpillar could move in?

24 A. Yes.

25 Q. And -- and that's your area to serve?

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. Yes.

2 Q. For -- I even -- we even talked, for example,
3 at your deposition, that a restaurant could go there,
4 and just raze the entire plant and open up a food
5 court; that's your area to serve in your mind?

6 A. Yes.

7 Q. Okay. We talked about -- well, we talked a
8 lot about the second Asset Purchase Agreement -- and
9 that is, Mr. Moore, Defendant's Exhibit 26. And go --
10 you and Mr. Gibbes talked a lot about this. Let's go
11 to -- let's go to page 179 first.

12 A. Okay.

13 Q. And you've got that title there. It says
14 "Retail Assets"; right?

15 A. Yes.

16 Q. And then it says, "The retail assets consist
17 of the following", and then you've got a -- you go
18 through A - H, we've got a whole litany of items there;
19 correct?

20 A. Correct.

21 Q. And then you -- you and Mr. Gibbes talked
22 about schedule 1 to Exhibit A, which is a couple of
23 pages over, starting at 181.

24 A. Okay.

25 Q. Okay. And this -- near the boundary

J. MOORE -- CROSS BY MR. NICHOLSON

1 description, flip -- flip over to 182..

2 A. Okay.

3 Q. There's a reference to Michelin right there in
4 the middle, correct?

5 A. Yes.

6 Q. It talks about -- it talks -- in describing
7 certain areas, it also includes -- it says, "Michelin
8 plant property"; right?

9 A. Yes.

10 Q. Okay. It doesn't -- it doesn't just say
11 "Michelin property", it says "Michelin plant property"?

12 A. Yes.

13 Q. Okay. One other thing, flip over to page 184.
14 It's that map that Design South prepared.

15 MR. NICHOLSON: If you don't mind -- Judge, I'm
16 going to come up here if you don't mind.

17 THE COURT: Sure.

18 BY MR. NICHOLSON:

19 Q. There's -- your testimony was these dark areas
20 were -- these are the areas that -- they are your City
21 areas?

22 A. That's correct.

23 Q. Okay. There's also colored in this line that
24 runs down here -- I guess that goes down -- what's this
25 middle site right here?

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. That's the BASF site.

2 Q. Okay. The BASF -- there's this big line that
3 runs down into BASF; right?

4 A. Correct.

5 Q. Okay. And then that sort of moves -- it goes
6 over to the -- to the Michelin site, to the left;
7 right?

8 A. That's correct.

9 Q. Okay. And that's colored in; right?

10 A. Yes.

11 Q. Because the City owns that line?

12 A. Yes.

13 Q. But you don't serve this area, this in and
14 around that line, though; right?

15 A. No, not to these --

16 Q. That's right. Yeah, you claim the need to be
17 in -- but in and around that colored area, that line,
18 you don't serve it, do you?

19 A. No.

20 Q. Okay. And while we're in that same -- that
21 same section --

22 MR. NICHOLSON: Give me one second.

23 THE COURT: Yes, sir.

24 BY MR. NICHOLSON:

25 Q. Mr. Moore, how about going over to Defendant's

J. MOORE -- CROSS BY MR. NICHOLSON

1 Exhibit 27.

2 A. Okay.

3 Q. Let's look at the definition section. And,
4 again, this is -- 27 is the Asset Purchase Agreement
5 between Duke and the City; right?

6 A. That's correct.

7 Q. Okay. And first, the -- the definition of
8 contract, it says "it means any legal and binding
9 obligation or agreement to which the seller" -- that's
10 Duke -- "is a party that relates exclusively to the
11 retail business, whether or not reduced to writing, and
12 specifically including without limitation any note,
13 bond, mortgage, lease of real or personal property,
14 license or -- and other instrument, but not including
15 permits".

16 A. Okay.

17 Q. Did I read that right?

18 A. You did.

19 Q. Okay. Now, flip over to me -- to the
20 definition of permits.

21 MR. GIBBES: I'm sorry, to what?

22 MR. NICHOLSON: Permits. It's on page 88. That
23 says "permits means all licenses, permits,
24 authorizations, registrations, certificate of
25 occupancy, franchises and approvals of any nature

J. MOORE -- CROSS BY MR. NICHOLSON

1 issued by any governmental authority to the seller, or
2 otherwise obtained by the seller from any government
3 authority, or held by the seller as of the date of this
4 agreement and are held exclusively in connection with
5 the operation of the retail business"; that's what it
6 says, right?

7 A. Yes.

8 Q. Okay. So what's included in the definition of
9 permits, which we've already seen, is not included in
10 the definition of contract; what is included in the
11 definition of permits is a franchise; right?

12 A. According to that paragraph.

13 Q. Okay. And Duke sold -- and Duke had a
14 franchise to sell water; correct?

15 A. Through the City, it did.

16 Q. Okay. Well, it was given a franchise to sell
17 water throughout -- everywhere it sold, right? I mean,
18 it sold -- it had a franchise to sell water to
19 Michelin? It had a franchise to sell water throughout
20 Anderson County; correct?

21 A. I can't speak to throughout Anderson County
22 whether or not it had a franchise.

23 Q. Okay. But you know they had at least one
24 franchise?

25 A. They had a franchise with the City of

J. MOORE -- CROSS BY MR. NICHOLSON

1 Anderson, operated its --

2 Q. Okay. Okay. Go to Defendant's Exhibit No.
3 10, Mr. Moore. You had discussed this agreement with
4 Mr. Gibbs, I believe, as it relates to the item,
5 territories -- it says "Meeting with City and water
6 company regarding this matter, it is important that we
7 resolve so that the City doesn't need to intervene with
8 the Secretary of State" -- y'all discussed that; right?

9 A. Yes, sir.

10 Q. And I believe at one point that the point
11 there was that -- what you were saying is, that if you
12 didn't -- I believe you told Mr. Gibbs this -- if you
13 didn't come to an agreement with regard to this Water
14 Sale Agreement, you weren't part of the group, then you
15 were going to object to the Secretary of State, to
16 allow them to become public service districts?

17 A. That's correct.

18 Q. Okay. And just to be clear, when we talked --
19 on the last one -- it says, "Assets, need to define
20 lines the City will get; need lease for tanks; need
21 agreement on the building"; right?

22 A. Yes.

23 Q. Okay. Insofar as the need to define the lines
24 the City will get, that was sort of spelled out in that
25 boundary description we just looked at, right? The

J. MOORE -- CROSS BY MR. NICHOLSON

1 lines you were getting?

2 A. In the -- in the asset purchase --

3 Q. Yes, sir.

4 A. The lines were spelled out.

5 Q. Okay. Now, you and Mr. Gibbes also talked
6 about Defendant's Exhibit No. 11; if you could go
7 there. The next one over.

8 A. Okay.

9 Q. Okay. The second paragraph, I guess, under
10 Background; do you see that?

11 A. Yes.

12 Q. I'm going to -- you and Mr. Gibbes talked a
13 little bit about that, but I'm going to read that
14 sentence to you -- the last sentence. "It appears that
15 the water companies are unilaterally considering these
16 disputed territory as theirs, and are now claiming them
17 through their special purpose district process".

18 A. That's correct.

19 Q. Okay. What they were doing, they were -- they
20 were providing the Secretary of State boundaries of
21 where they believe their -- their territory was;
22 correct?

23 A. Yes. Generally speaking. What they -- what
24 they plan to put -- to define in their territory.

25 Q. All right.

J. MOORE -- CROSS BY MR. NICHOLSON

1 A. Correct.

2 Q. Now, you referenced earlier, having an
3 objection to the Secretary of State -- did you ever do
4 that?

5 A. No.

6 Q. You also talked about Defendant's Exhibit 17;
7 would you go there?

8 A. Okay.

9 Q. And it says, item number 5, -- and, again,
10 this was a letter that Mr. McClain wrote to lawyers for
11 West Anderson and Starr-Iva, correct?

12 A. Yes.

13 Q. Okay. And number 5 says, "The City will serve
14 the Michelin plant, which is to be located in the West
15 Anderson district"; right?

16 A. Yes.

17 Q. Okay. That plant was being constructed at
18 that time or was under consideration?

19 A. It certainly was, yes.

20 Q. Okay.

21 MR. NICHOLSON: Judge, I wonder, could we go ahead
22 and take our break now and see -- and let me get a
23 chance just to go through this and see if I have any
24 more?

25 THE COURT: Yes, sir. I'll be happy to.

J. MOORE -- CROSS BY MR. NICHOLSON

1 MR. NICHOLSON: Great.

2 THE COURT: 15 minutes.

3 MR. NICHOLSON: Thank you so much, Judge.

4 THE COURT: Yes, sir.

5 (After a recess, court reconvened.)

6 THE COURT: Okay.

7 BY MR. NICHOLSON:

8 Q. Okay. Exhibit 10.

9 A. Okay.

10 Q. Okay. This is December 29, 2001 email from
11 Mr. McClain and it's to you, and Dan McLeod, and
12 Richard -- it looks like a lot of people you described
13 to be on the negotiation team?

14 A. That's correct.

15 Q. Okay. He's -- he's -- he's pointing out
16 several things. I want -- I want to look at the -- the
17 section that talks about 1 A, line and tank ownership;
18 do you see that?

19 A. Yes.

20 Q. Mr. -- and I'm going to try to read slowly --
21 Mr. McClain says, "I think AC -- ACJWS" -- that's the
22 Joint Water System, right?

23 A. That's correct.

24 Q. "Takes the position that they will own the
25 lines servicing OCF and Michelin. It should be made

1 clear that the City owns those lines and the OCF tank.
2 These customers are in other geographical districts and
3 problems could develop for future governing bodies of
4 those districts deciding they want to service them" --
5 when he talks about the customers in other geographical
6 districts, as far as the Michelin customer is -- is
7 concerned, he's talking about being surrounded by the
8 West Anderson District; correct?

9 A. And others, yes.

10 Q. Okay.

11 MR. NICHOLSON: That's all I've got, Judge. Thank
12 you.

13 THE COURT: All right.

14 MR. GIBBES: Can I ask just one --

15 THE COURT: Yes, sir.

16 MR. GIBBES: -- short question.

17 **REDIRECT EXAMINATION BY MR. GIBBES:**

18 Q. Mr. Moore, Mr. Nicholson asked you if the --
19 reminded you of your comment in one of your emails,
20 that the City might interpose an objection with the
21 Secretary of State if the water companies and the City
22 didn't come to some agreement; do you recall that?

23 A. Yes.

24 Q. And he asked you if the City ever objected --
25 filed an objection with the Secretary of State on this

1 -- and I think you said No.

2 A. Yes. I said No.

3 Q. Would I be correct that the reason the City
4 never filed an objection is because, in fact, the water
5 companies came to an agreement with the City about the
6 service area the City would serve?

7 A. That's correct.

8 Q. All right. Now, Mr. Nicholson also asked you
9 whether it was the City's position that if Michelin
10 shut down this plant, and a new owner Caterpillar took
11 over the site, if it wasn't -- if it was the City's
12 position that you would be entitled to serve
13 Caterpillar. And you said yes, did you not?

14 A. Yes.

15 Q. All right. And, in fact, it is the City's
16 position that you are entitled to serve customers
17 throughout the City's retail service area shown on
18 Exhibit D regardless of who occupies the site?

19 A. That's correct.

20 Q. Is that correct?

21 A. Correct.

22 Q. And, in fact, within the City -- this part of
23 that territory, customers change and people move and
24 things change every day, doesn't it?

25 A. Sometimes more often than we like, but yes.

1 Q. And as we recall -- unfortunately from the mid
2 to late 2007, '08, '09 period, the same thing pretty
3 well happened with a lot of industries, didn't it?

4 A. Yes.

5 Q. All right. And so in your experience, as the
6 City manager, it is not uncommon to have an industry
7 locate somewhere within the county one day, and be gone
8 the next?

9 A. That would be correct.

10 Q. If the City had known that West Anderson, when
11 they signed the agreement, meant that if Michelin
12 shuttered its plant two months after you signed the
13 Water Sale and Purchase Agreement, and thereafter you
14 couldn't serve -- Caterpillar set up operation six
15 months later, would the City have invested 1 to \$2
16 million dollars in -- to acquire infrastructure for
17 that site?

18 A. Absolutely not.

19 MR. GIBBES: All right. Thank you. That's all
20 the questions I have.

21 THE COURT: Anything?

22 MR. NICHOLSON: No.

23 THE COURT: Sir, you may step down.

24 MR. GIBBES: Judge, I would like to call our next
25 witness, Jeff Caldwell.

J. CALDWELL -- DIRECT BY MR. GIBBES

1 THE COURT: All right.

2 CLERK: Mr. Caldwell, if you'd please raise your
3 right hand to be sworn in.

4 JEFF H. CALDWELL, having
5 been first duly sworn, testified as follows:

6 CLERK: Please state your full name for the
7 record.

8 THE WITNESS: Jeffrey Hamilton Caldwell.

9 DIRECT EXAMINATION BY MR. GIBBES:

10 Q. Mr. Caldwell -- may it please the court -- Mr.
11 Caldwell?

12 A. Yes, sir.

13 Q. Where do you currently live?

14 A. 218 Pebblebrook (ph) Lane in Belton, South
15 Carolina.

16 Q. Now, have you lived in Belton most of your
17 life?

18 A. Yes, sir.

19 Q. All right. Where did you go to high school
20 and when did you graduate?

21 A. 1990 from Belton-Honea-Path High School.

22 Q. And did you thereafter go to college?

23 A. I did. I went to Clemson University.

24 Q. And when did you graduate and with what
25 degree?

J. CALDWELL -- DIRECT BY MR. GIBBES

1 A. 1995 with a Bachelor of Science in Civil
2 Engineering.

3 Q. All right. After graduating from Clemson, who
4 did you go to work for?

5 A. Shortly after graduation, I went to work with
6 Design South Professionals.

7 Q. All right. And is that the same engineering
8 firm that we've heard mentioned in connection with this
9 case?

10 A. Yes, sir.

11 Q. All right. And what were the dates that you
12 worked for Design South?

13 A. December of '95 through July of 2002.

14 Q. All right. So you were actually employed by
15 Design South at or about the time they were working on
16 the map that became Exhibit A to these agreements?

17 A. Yes, sir.

18 Q. Did you play any personal role in doing that
19 work?

20 A. No, sir.

21 Q. All right. And, in fact, did you have
22 anything to do with anything we've talked about up
23 until you came to the City in July of 2002?

24 A. No, sir.

25 Q. All right. Did you, in fact, go to work for

J. CALDWELL -- DIRECT BY MR. GIBBES

1 the City in July of 2002, or thereabouts?

2 A. Thereabouts. It was actually August 1st.

3 Q. I'm sorry. Okay. And what position did you
4 take with the City?

5 A. Utilities Director.

6 Q. All right. And as Utilities Director, who did
7 you report to -- who had you reported to over the
8 years?

9 A. The City Manager, John Moore.

10 Q. All right. What, generally, are your
11 responsibilities as manager? What departments are you
12 over?

13 A. It's the day-to-day operations of a water
14 distribution system, sewer collection and a sewer
15 treatment system.

16 Q. All right. And I realize this probably
17 changes from time to time, but roughly how many
18 employees work in the utilities department?

19 A. I have three direct employees, and then
20 approximately 35 total.

21 Q. Okay. Now, do you hold any registrations of
22 civil engineering in South Carolina?

23 A. I do. I have a professional engineering
24 license.

25 Q. And how long have you held that license?

J. CALDWELL -- DIRECT BY MR. GIBBES

1 A. I received that in 2001.

2 Q. You received it when?

3 A. 2001.

4 Q. Okay. Thank you. Now, we're going to
5 shortcut your testimony, given the hour of the day and
6 some discussions I think I've had with the court and
7 Ms. Spruill. But at some point were you asked to
8 calculate the money that the City is claiming -- or
9 asserting, the cost of reimbursement in this case?

10 A. Yes, sir.

11 Q. All right. Now, the City is -- I will tell
12 you -- is claiming costs, and asking West Anderson to
13 reimburse the City for whatever additional costs the
14 City incurred to serve the Michelin site and the new
15 facilities specifically, should the court determine the
16 City is no longer to serve these two sites; do you
17 understand that?

18 A. Yes, sir.

19 Q. Now, I'm going to ask you to turn to
20 Defendant's Exhibit No. 44. And let me just ask -- I
21 just want to ask you one question about this document.
22 Is Defendant's Exhibit 44, that bears a date in the
23 upper right hand corner, that our lawfirm put on it, of
24 5/23/13, your initial graph of a damage calculation?

25 A. Yes, sir.

J. CALDWELL -- DIRECT BY MR. GIBBES

1 Q. All right. Now, let me ask you to turn to
2 exhibit 45 -- Defendant's Exhibit 45. And this bears a
3 date -- well, actually almost a year later to the day
4 -- April 24, 2014; is this correct?

5 A. Yes, sir.

6 Q. And does this represent your updated analysis
7 with supporting documentation?

8 A. Yes, sir.

9 Q. All right. Now, if you look at Defendant's
10 Exhibit 45, the spread sheet, what -- what are you
11 showing in that top lines, 5 through 20 generally?

12 A. The infrastructure that had -- that was either
13 purchased from Duke, installed by the City after the
14 sale, or installed by the Joint System after the sale.

15 Q. All right. And if you go over to line H and I
16 and J, what does the column "install cost" represent?

17 A. That would be an item that the City -- either
18 the City or the Joint System installed after the
19 purchase of the system.

20 Q. For which the City paid money?

21 A. Yes.

22 Q. All right. And the total of that is
23 \$6,647,000 roughly?

24 A. No, sir. The installed cost is only \$2.6
25 million.

J. CALDWELL -- DIRECT BY MR. GIBBES

1 Q. Okay.

2 A. Of that 6.6.

3 Q. I'm sorry. What is the \$6,647,000 represent?

4 A. That's the total, all-in cost that we -- the
5 City paid to purchase infrastructure capacity before --
6 at the sale and --

7 Q. Okay. Now, did you allocate those costs
8 between the three sites that have been discussed, the
9 Michelin site, the BASF site, and the Owens Corning
10 site?

11 A. Yes, sir.

12 Q. All right. The only one I want to ask you
13 about is the Michelin site, and where is that shown on
14 this document?

15 A. It starts with line 45.

16 Q. All right. And goes down to line 61 or 62, is
17 that correct?

18 A. Yes, sir.

19 Q. All right. And so what does the purchase --
20 total purchase and install cost for infrastructure and
21 improvements to the Michelin site that you show?

22 A. In column F, in the orange, it is \$1.8 million
23 roughly -- \$1,870,230.66.

24 Q. Now that, I take it, represents the total
25 purchase and install costs to serve the entire site,

J. CALDWELL -- DIRECT BY MR. GIBBES

1 inclusive of the old facility and the new facility; is
2 that correct?

3 A. And future.

4 Q. And the future.

5 A. Yes.

6 Q. All right. Is there a portion that you have
7 allocated to -- of costs -- the costs the City has
8 incurred to serve the Michelin new plant or future
9 capacity?

10 A. Directly contributed to that, yes.

11 Q. All right. And which part is that?

12 A. Mainly the part in green -- the expanded
13 capacity, plus some transmission improvements and
14 electrical upgrade, and an office facility.

15 Q. All right. And I don't know what happened to
16 our line numbers there, but they seem to have
17 disappeared. But it is roughly lines 56 through 60; is
18 that correct?

19 A. Yes, yes, sir.

20 Q. If I counted it backwards?

21 A. I think that's correct.

22 Q. And I know we don't show a total here, but
23 with the court's indulgence and Ms. Spruill, is that
24 total of those five lines in green, under Michelin P&I
25 costs, lines 56 through 60, column F, you and I've done

J. CALDWELL -- CROSS BY MS. SPRUILL

1 the math, and it comes to \$391,639.45, if we did our
2 math correctly; is that right?

3 A. Yes, sir.

4 Q. But the number that that is -- supposedly the
5 total of it -- hopefully the total of it is lines --
6 under column F, lines 56 through 60; is that correct?

7 A. Yes, sir.

8 Q. Now, -- and that is the amount that the City
9 is claiming and asking the court to require West
10 Anderson to reimburse the City if the court should give
11 West Anderson the right to serve the Michelin site
12 outside of the existing plant?

13 A. Yes.

14 MR. GIBBES: All right. Your Honor, that's all
15 the questions I have for Mr. Caldwell.

16 THE COURT: All right. Yes, ma'am.

17 CROSS EXAMINATION BY MS. SPRUILL:

18 Q. Good afternoon, Mr. Caldwell.

19 A. Good afternoon.

20 Q. I have a few questions for you, mostly about
21 the spreadsheet you and Mr. Gibbes were just
22 discussing. Just to clarify, you weren't involved in
23 the 2002 agreement?

24 A. No.

25 Q. And you first heard Michelin was planning to

J. CALDWELL -- CROSS BY MS. SPRUILL

1 build this second plant within the boundaries of the
2 West Anderson Water District in 2012; is that correct?

3 A. Somewhere in that timeframe.

4 Q. Okay. And we just got this in on Friday, but
5 you've just recently gotten two new contracts with
6 Michelin; is that correct?

7 A. Yes, ma'am.

8 Q. One for what we've been calling Michelin I, or
9 the existing plant, and one for Michelin II, the new
10 plant?

11 A. Yes, ma'am.

12 Q. And those are two separate meters, correct?

13 A. Yes, ma'am.

14 Q. Two separate -- is it a meter size or a line
15 size?

16 A. Meter size.

17 Q. Okay. And they're separate -- they're
18 different, right, the numbers on the meter sizes?

19 A. Yes. One is an eight inch and one is a ten
20 inch.

21 Q. And those are five year contracts; right?

22 A. I believe. They have renewal clauses.

23 Q. And -- I'm sorry?

24 A. They're renewable from year to year, I
25 believe.

J. CALDWELL -- CROSS BY MS. SPRUILL

1 Q. I think that's right. If you want to double
2 check, it's exhibit 48 and 49 in the black notebook,
3 but I certainly don't want to put words in your mouth.

4 A. Okay.

5 Q. And in exhibit 45, you told Mr. Gibbes you
6 prepared this?

7 A. Yes, ma'am.

8 Q. And the back-up that goes behind it. And just
9 so we can help the Judge out, there's a bigger copy of
10 that stuck as the back page of that exhibit; right?
11 There's a pull out copy where you can see all the lines
12 -- or did -- I just got a big one that I should say
13 with folks so they can read it, because that front page
14 is small -- yeah, that one. Is the back page of
15 y'all's exhibit 45 like this --

16 MR. GIBBES: If it isn't, I apologize. It's
17 supposed to be.

18 MS. SPRUILL: There it is. Judge, it just makes
19 it a little easier to see what we're talking about,
20 these numbers are so small.

21 BY MS. SPRUILL:

22 Q. And I think you just told me --

23 A. Is it after 9-B -- is it after page 9-B?

24 Q. Yes.

25 A. Okay.

J. CALDWELL -- CROSS BY MS. SPRUILL

1 Q. They found it.

2 A. I do not have it.

3 Q. You don't have it. Here, I'll give you mine.
4 I've got a blow-up too.

5 MS. SPRUILL: Mr. Gibbes, do you mind, I've got a
6 tiny little bit of highlight.

7 MR. GIBBES: That's fine.

8 MS. SPRUILL: Here you go. It's a little easier
9 to see. That's the same thing.

10 BY MS. SPRUILL:

11 Q. And from what you just told Mr. Gibbes, at
12 this point the City is only claiming its damages -- the
13 items from -- the numbered columns out on the outside,
14 lines 56 to 60, and in column F?

15 A. Yes, ma'am.

16 Q. And this exhibit 45, you just made this for
17 purposes of litigation; right?

18 A. Yes, ma'am.

19 Q. None of this is on the City's books quite this
20 way; right?

21 A. No, ma'am.

22 Q. And you're an engineer. You're not an
23 accountant; right?

24 A. Yes, ma'am.

25 Q. And just one more time, the City is not

J. CALDWELL -- CROSS BY MS. SPRUILL

1 claiming anything outside those lines, 56 to 60, in
2 Column F anymore, are they?

3 A. Not as a part of the new facility.

4 Q. Okay. And you're not claiming the tap cost or
5 anything in connection, directly with hooking Michelin
6 II up to the City of Anderson's retail system?

7 A. No, ma'am.

8 Q. So just to -- I talked to you briefly about
9 this not so long ago to try to sort out where these
10 numbers came from, and what they mean -- if I remember
11 right, and set me straight if I don't, but all of these
12 numbers between 56 and 60 are just sort of pro rata
13 allocations of Joint System's assessments; aren't they?

14 A. Yes. They came directly from Joint System
15 documents.

16 Q. Right. And they're not -- it's not -- oh, we
17 need this out at the Michelin property today, we're
18 going to go spend this money?

19 A. No. Those numbers are based on actual -- the
20 -- the Michelin expansion capacity, in -- that would
21 have been in line 56.

22 Q. Uh-huh.

23 A. Set forth the percentage of what we spent on
24 the rest of those.

25 Q. Okay. Great. And just to clarify, none of

J. CALDWELL -- CROSS BY MS. SPRUILL

1 these charges have anything to do with Michelin
2 specifically; do they?

3 A. The expansion capacity -- a portion of the
4 expansion capacity.

5 Q. Okay. And we'll talk about how you allocated
6 that -- we'll start there.

7 A. Okay.

8 Q. So in your back-up packets, they are -- you've
9 got several packages numbered behind your original
10 spreadsheet. And I think -- and set me straight if I'm
11 wrong -- the back-up package number five, which starts
12 at page 33, if you're looking at the numbers on the top
13 left -- is the one that explains the expansion
14 capacity, that line 56; is that right?

15 A. That's most of it, but there is one more
16 calculation as part of it --

17 Q. And we'll talk about that. That was one of
18 the things that confused me a little when I talked to
19 you about this earlier, so we probably need to talk
20 about it again so everybody else will understand it.

21 MR. GIBBES: Judge, we had an informal conference.

22 MS. SPRUILL: That's right. We did have
23 depositions. We just had a meeting --

24 MR. GIBBES: He had already been deposed, and then
25 we produced that, and she asked for an informal

J. CALDWELL -- CROSS BY MS. SPRUILL

1 conference.

2 THE COURT: Sure.

3 MS. SPRUILL: So we will not be opening up a
4 deposition to talk about this, which is --

5 THE COURT: Okay.

6 MR. GIBBES: We're counting on Ms. Spruill's
7 memory.

8 MS. SPRUILL: But I think we're going to sort it
9 out because we've got Mr. Caldwell's math. We're going
10 to sort of what his math means. That's all we're
11 doing.

12 BY MS. SPRUILL:

13 Q. So, looking at this back-up package 5, this
14 expansion was done back in 2007; is that correct? I
15 think you can see it if you turn to page 35, you'll see
16 where the payment initiation date is on the upgraded
17 expansion.

18 A.. Okay. Yes, ma'am, 2007, you said?

19 Q. I think so. I think that's what you told me
20 at the time. That's what my notes says. And as we've
21 already established, nobody was talking about an
22 additional Michelin plant back in 2007?

23 A. No.

24 Q. And the number you've got there for that
25 expansion capacity, tell me if this is right -- you

J. CALDWELL -- CROSS BY MS. SPRUILL

1 took the total -- the City's total share of the
2 expanded capacity, and allocated that -- allocated 15
3 percent of the City's total share to the three
4 industrial sites that we've been talking about today;
5 to Michelin, to BASF and Owens Corning as a whole,
6 based roughly on their original allocation percentages
7 at the time, back in 2002, when the agreement was done?

8 A. Yes, ma'am -- took the total -- let's me see
9 if I know what you said --

10 Q. The City got an extra 13 million gallons a day
11 capacity -- is it a day?

12 A. No. The City purchased an extra 3.66 of the
13 that it was expanded.

14 Q. Well, that -- that was the 15 percent you
15 attributed back -- but what I was seeing was to -- the
16 City got 13 all -- at that time. And then you took the
17 total amount you paid -- no, wait. Okay. That's
18 right. The system got 13 million -- I knew I didn't
19 have it straight. The system got 13 additional million
20 gallons a day, of that the City got 3.66?

21 A. Yes, ma'am.

22 Q. And you took the original percentage of
23 allocation capacity to those three industries, which
24 was about 15 percent -- actually, I think it was a
25 little more -- I think it was 18 percent?

J. CALDWELL -- CROSS BY MS. SPRUILL

1 A. Yes, ma'am.

2 Q. And you just -- for purposes of this map, you
3 used 15 percent as a round number?

4 A. Yes, ma'am.

5 Q. To give a percentage share of that system wide
6 expanded capacity, the City's share of that to these
7 three industries?

8 A. To that area, of the City's service area.

9 Q. Okay. So you wound up allocating -- so,
10 really, it wasn't based on a specific anticipated need
11 of any of those companies, it was just the increased
12 capacity -- the City's share of the increased capacity
13 for the whole system?

14 A. The 3.66 was our increase for the whole
15 system, yes.

16 Q. And the share you attributed back to those
17 industries was based back on their original allocation?

18 A. Some, ish.

19 Q. Ish?

20 A. Yes. Yes, ma'am.

21 Q. That's a technical term, ish. And then you
22 took the amount of the assessment for the City,
23 multiplied it by .15, to come up with the total share
24 to these three industries?

25 A. Yes, ma'am.

J. CALDWELL -- CROSS BY MS. SPRUILL

1 Q. And then once you had that, you multiplied it
2 by .33 or -- you split it into thirds, one-third to
3 Michelin, one-third to BASF, and one-third to OCF; is
4 that right?

5 A. I took the 3.66, multiplied it times 15
6 percent, and got .55.

7 Q. Right.

8 A. Which was completely coincidental --

9 Q. Well, the .55 is -- I know how that worked.
10 You multiplied the .55 by the total -- the price per
11 million gallon, right up there in the expanded capacity
12 calculation?

13 A. Well, we multiplied the 3.66 times 15 percent
14 to get the .55.

15 Q. Right.

16 A. And then multiplied the .55 --

17 Q. By the --

18 A. By --

19 Q. Three seven five --

20 A. Yes. By the total cost per million gallons.

21 Q. That's right. That's right. So you took that
22 -- that .55, and you multiplied it by three
23 seventy-five, two seventy-seven million dollars per
24 million gallons?

25 A. Yes, ma'am.

J. CALDWELL -- CROSS BY MS. SPRUILL

1 Q. And that gave you the big number for all three
2 industries? And then you gave a third to each of
3 those, to those industries?

4 A. Yes, ma'am.

5 Q. Okay. And that takes care of us on 56. On
6 57, that's back-up package number 6, that starts on
7 page 38. And that one -- was that work done -- as I
8 look at this -- it looks to me like the work on that
9 one was done in 2010. Would you look at page 41, where
10 the payments get started.

11 A. Yes, ma'am.

12 Q. And, again, nobody's talking about Michelin II
13 until 2012; right?

14 A. Yes, ma'am.

15 Q. And this improvement didn't add capacity, did
16 it?

17 A. It was needed to distribute the expanded
18 capacity and make sure every member was able to receive
19 the entire capacity that they had purchased.

20 Q. Right. So it was a system wide improvement?

21 A. Yes.

22 Q. Okay. And the way you allocated this one,
23 it's pretty similar to what we just talked about,
24 except you determined the City's share using -- I
25 believe your word for it was a blended capacity? You

J. CALDWELL -- CROSS BY MS. SPRUILL

1 took what they got in '02, and added what they got in
2 '07?

3 A. Yes.

4 Q. And so once you determined what the City paid
5 for that, you then did 15 percent out to the three
6 industries and then split that into thirds, to get
7 Michelin, BASF and OCF shares; is that more or less
8 right?

9 A. Yes, ma'am.

10 Q. And, again, it wasn't based on any specific
11 anticipated need of any of those customers; right?

12 A. It was future growth of the system.

13 Q. And it doesn't split out the existing Michelin
14 plant from something that might happen in the future,
15 does it?

16 A. No, ma'am.

17 Q. And number 58, that's back-up package 7 -- no,
18 59, I'm sorry. That's back-up package 7.

19 A. I think it is 58.

20 Q. Okay. You're right. You're right. I jumped
21 ahead of myself. And this one came up -- this is
22 another assessment from the system; right?

23 A. Yes, another improvement -- infrastructure
24 improvement to the system.

25 Q. And does this one have the same method of

J. CALDWELL -- CROSS BY MS. SPRUILL

1 allocation we just talked about for the last one, you
2 took the blended capacity, you figured out the City's
3 share of the total assessment, and then you allocated
4 15 percent to each of these three sites, and then split
5 it out, a third, a third, a third, for your final
6 number?

7 A. Yes, ma'am.

8 Q. And, again, this one didn't have anything to
9 do with a specific anticipated need of any of those
10 companies, did it?

11 A. No, nothing specific.

12 Q. And number 59, am I right -- I think this one
13 was an electrical upgrade done over at the water
14 treatment plant back in 2010; is that right?

15 A. Yes, ma'am.

16 Q. You're making sure the plant was up to code?

17 A. Yes, ma'am.

18 Q. And, again, in 2010, nobody is talking about
19 Michelin II?

20 A. Correct.

21 Q. And this improvement didn't add capacity, it
22 was just to make sure the plant stayed functional and
23 operational?

24 A. Yes.

25 Q. And the allocation method is the same as the

J. CALDWELL -- CROSS BY MS. SPRUILL

1 one we just discussed?

2 A. Yes, ma'am.

3 Q. And the last one you've got here, number 60,
4 am I right that this is when the Joint System built a
5 new office and maintenance facility?

6 A. Yes, ma'am.

7 Q. And was that back in 2007?

8 A. Yes, ma'am.

9 Q. And this improvement didn't add any kind of
10 capacity, did it?

11 A. It did not add capacity.

12 Q. And it's the same method of allocation as the
13 last few we discussed -- I think 57 through 60, you did
14 the math exactly the same way --

15 A. Yes, ma'am.

16 Q. -- and 56 is slightly different, but it's
17 close?

18 A. Yes, ma'am.

19 Q. And, again, it wasn't based on any specific
20 anticipated need of any customer?

21 A. No, just specifically, it was future growth.
22 You've got -- you've got to have capacity available in
23 case somebody needed it.

24 Q. Well, here, we're back on number 60, which is
25 the system building a new headquarters?

1 A. We had to pay a portion of that based on the
2 expanded capacity that we associated to that site.

3 Q. Okay. I understand that. But it was -- it
4 was done because the system needed a headquarters; it
5 wasn't done because somebody out in the -- some
6 customer out in the field needed it done?

7 A. That is correct.

8 Q. And none of these allocations split out any
9 assessment for the old Michelin plant vs. the new plant
10 that recently came online?

11 A. No, ma'am.

12 MS. SPRUILL: I don't have anything further for
13 you, Mr. Caldwell.

14 THE COURT: Yes, sir.

15 **REDIRECT EXAMINATION BY MR. GIBBES:**

16 Q. Mr. Caldwell, maybe it's clear, but Ms.
17 Spruill keeps asking you about -- no one is talking
18 about the new facility or the old facility, that kind
19 of stuff. From the time you became the Utilities
20 Director to the current, the City had viewed its retail
21 service area as the entire area as shown in red -- or
22 orange -- whatever that color is?

23 A. Yes, sir.

24 Q. All right. And the City's books and records
25 are maintained for the retail service area as a whole;

1 is that correct?

2 A. Yes, sir.

3 Q. And the only reason that you have been called
4 upon to allocate them is because of this lawsuit?

5 A. Yes, sir.

6 MR. GIBBES: Thank you. That's all the questions
7 I have.

8 THE COURT: Anything?

9 MS. SPRUILL: Nothing further, Your Honor.

10 THE COURT: Sir, you may step down. Please be
11 careful.

12 MR. GIBBES: Your Honor, I can't remember what we
13 last advised you formally, but we did have two
14 witnesses for tomorrow, (1) Mr. Rosier and (2) Ms.
15 Pope, but I have decided that we will not call Mr.
16 Rosier for the City. And under the agreement I had
17 with Ms. Spruill, I offered her to -- him to her if she
18 wanted him, and she doesn't want him. So we will have
19 Ms. Pope at 10:00 tomorrow if that still suits the
20 court.

21 THE COURT: Yes, sir.

22 MR. GIBBES: And that will be the -- unless
23 something changes overnight, that will be our final
24 witness.

25 THE COURT: Okay.

M. POPE -- DIRECT BY MR. GIBBES

* * * P R O C E E D I N G S * * *

AUGUST 13, 2014

THE COURT: Okay.

(Off-record discussion with attorneys and Mr. Belton Ziegler, present in the courtroom.)

THE COURT: All right. Madam Court Reporter says she's ready, everybody's ready. Mr. Gibbes.

MR. GIBBES: Your Honor, the City would call as its next witness, Margaret Pope.

THE COURT: Okay.

CLERK: Ms. Pope, would you please step forward to be sworn in. Please raise your right hand.

MARGARET POPE, having been first duly sworn, testified as follows:

CLERK: Please give us your full name for the record.

THE WITNESS: My name is Margaret Christian Pope.

CLERK: Okay. You may have a seat around on the witness stand.

DIRECT EXAMINATION BY MR. GIBBES:

Q. Ms. Pope, I am going to put up here on the witness stand with you, two books that contain the Defendant's Exhibits. And I may ask you to refer to those. You may have done it, but would you state your

M. POPE -- DIRECT BY MR. GIBBES

1 name for the record, please.

2 A. Yes. My name is Margaret Pope.

3 Q. And Ms. Pope, where do you reside or live at
4 the current time?

5 A. I live in Columbia, South Carolina.

6 Q. Can you tell us where you went to high school?

7 A. I went to Greenwood High School. I had a
8 great time.

9 Q. Okay. And how about college?

10 A. I went to Emory University.

11 Q. And law school?

12 A. Columbia, the University's school.

13 Q. Okay. And when did you graduate from law
14 school?

15 A. 1975.

16 Q. Okay. Can you tell us briefly about the --
17 your career, profession since then, and the law firms
18 you've been associated with and the dates, roughly,
19 that that occurred?

20 A. Certainly. When I started my practice in the
21 Fall of 1975, I joined a firm -- a very small firm,
22 named Stuckey & Wise. Jimmy Stuckey was chair of the
23 county council. Dewey Wise then a state senator. So I
24 was sort of the little lawyer holding the house down
25 while they went out and did --

M. POPE -- DIRECT BY MR. GIBBES

1 Q. Sounds like the only lawyer doing real work.

2 A. It's been done before.

3 Q. And where -- where did you go next?

4 A. Then after I decided that I really just could
5 not do that kind of -- practice that kind of law, it
6 was by the seat of the pants, with very little
7 training. As you know when you come out of law school,
8 you really don't know how to practice law. So I
9 decided that I would go obtain my tax degree, and then
10 I could avoid being the jack of all trades.

11 So I applied to New York University. I was
12 accepted; unfortunately paid my fee, and then was
13 approached by Mr. Eugene Sinkler, who had heard of me
14 from people my age, that I was very interested in doing
15 a very focused, non litigation practice. So
16 unbeknownst to me, he was given all that information.
17 Called me and asked me if I could for an interview.

18 I joined his firm in April of 1977, so I did not
19 go to tax school, and have been -- and I was there
20 through two mergers, until January of 2008, when Mr.
21 Sinkler and I started our own lawfirm.

22 Q. During the time period, around 2000, 2002,
23 when some of the events we're talking about here
24 occurred, what was the name of the firm at that point?

25 A. I believe -- I know that we started all this

M. POPE -- DIRECT BY MR. GIBBES

1 in -- when we were at Sinkler & Boyd -- I can't
2 remember the date. They may, but I cannot remember the
3 date of the merger with the Haynsworth firm. It was in
4 the early 2000s.

5 Q. In -- during the time period of 2000 to 2002,
6 where were you physically located?

7 A. Columbia.

8 Q. In terms of an office?

9 A. Columbia.

10 Q. Okay.

11 A. Yeah, when I left Charleston, I moved to
12 Newberry, then moved to Chapin, then moved to Columbia,
13 but I always practiced in Columbia.

14 Q. Now, I have heard what you said about your
15 desires about your practice, over the years -- and
16 particularly during the period -- say the ten years or
17 so before 2000, what was the nature of your practice?
18 What did you focus on?

19 A. I have always practiced public finance. I've
20 never done anything other than that, about 13 months of
21 general practice.

22 Q. And for those of us that don't understand the
23 intricacies of public finance, what generally does that
24 involve?

25 A. In it's narrowest sense, it involves assisting

M. POPE -- DIRECT BY MR. GIBBES

1 public entities in their financial transactions.

2 Q. Now, have -- prior to 2000, did you ever have
3 occasion to work with water districts or water
4 companies such as the West Anderson entity?

5 A. Many, many, many of my clients from the
6 beginning of my practice in 1977, involved similar
7 districts, cities, counties. It was very very similar.

8 Q. So it's fair to say that you had a great deal
9 of experience working with both municipalities and
10 entities such as the West Anderson Water District prior
11 to 2000?

12 A. Right.

13 Q. All right. Now, what do you recall -- how did
14 you come -- you personally come to be involved in the
15 business of the City and the water companies purchasing
16 the Duke assets and eventually the Water Sale and
17 Purchase Agreement that you worked on?

18 A. There -- there was a very well respected, and
19 actually a very, very good friend, Tom Hutchinson, who
20 had been hired by Mr. Leo Hill, who was a -- a lawyer
21 in Greenville. And Mr. Hill's practice was totally
22 devoted to pretty much the non-transactional --
23 non-financial transactional parts of the work that
24 public utilities, cities, counties did -- which we kind
25 of call more public law. And we -- frankly, I say in a

M. POPE -- DIRECT BY MR. GIBBES

1 narrow sense, there's a always a measure of public law
2 that you do when you do public finance, because you've
3 got to be certain that the entities are structured
4 correctly, established correctly, that whole thing, so
5 that all goes together.

6 And we had worked at Sinkler Gibbes & Simmons
7 and Sinkler & Boyd very closely with Mr. Hill. He was
8 many times local counsel, would call on us to assist
9 him when things got fairly complicated, and when his
10 clients needed to borrow money, so he probably had
11 hired Tom to help him figure out how this could happen.

12 Because most of -- not most -- but many of the
13 entities that bought water from Duke were not public
14 entities. They were nonprofit companies. And their
15 law that governs them can be quite different from what
16 governs public entities, so he -- I believe the way he
17 got started in all of that, was helping Mr. Hill figure
18 out exactly how an entity could be created to purchase
19 the Duke facilities.

20 Q. Now, Mr. Hutchinson, you mentioned, was he a
21 partner or member of the lawfirm you worked with?

22 A. He was a senior partner at Sinkler Gibbes &
23 Simmons and one of my mentors when I was in Charleston.
24 And then he left -- he left when we merged, I think,
25 with Ford Melton Tate & Finley (phonetic), and went

M. POPE -- DIRECT BY MR. GIBBES

1 with some others to Nelson Mullins.

2 Then after we had been Sinkler & Boyd for a
3 while, he came back. But he was always in the
4 Charleston office.

5 Q. During the time period from roughly 2000 to
6 2002, when the principle agreements related to this
7 transaction were being created, and then signed, was he
8 in the same firm as you?

9 A. I believe so. People move around so much,
10 it's hard to keep track of them. But I believe that he
11 had rejoined us by that time.

12 Q. Now, you mentioned that Mr. Hutchinson,
13 particularly, and perhaps you had some part in helping
14 Mr. Hill structure the way this transaction would take
15 place. And you also mentioned that there was a
16 difference, as you understand it, between a nonprofit
17 water company and a special purpose district; is that
18 correct?

19 A. Right.

20 Q. Can you help us understand -- was legislation
21 passed at or about this time that permitted a water
22 company to convert to a special purpose district?

23 MS. SPRUILL: Objection, Your Honor. He's getting
24 out of just the facts now, and into the law that is
25 applicable to these things and legal opinions.

M. POPE -- DIRECT BY MR. GIBBES

1 THE COURT: Well, that's overruled. He's not
2 asking for a legal opinion now. He's asking was
3 legislation passed. That's public knowledge anyway.

4 A. The -- okay. When this -- when the law was
5 passed to allow public entities to join together and
6 form yet another public entity, it only allowed public
7 entities to do that. So in order for the companies,
8 those purchasers of Duke water that were companies to
9 be able to join, they had to have a simple way -- I
10 believe to change your status as a company, to a
11 district. And it was very narrowly drawn. And, yes,
12 it was -- it was one of the steps that was first
13 undertaken.

14 Q. So that legislation had to be in place for
15 this transaction to be structured the way it was?

16 A. That, or something similar, because you could
17 not admit companies to those agencies. They all had to
18 be public entities as I recall.

19 MR. GIBBES: Excuse me, one minute.

20 BY MR. GIBBES:

21 Q. Ms. Pope, let me ask you if you would get the
22 first notebook in front of you, that I think has
23 exhibits 1 through 25, or something like that in it.
24 And let me ask you if you would turn to Defendant's
25 Exhibit 2, and ask you if you recognize that document?

M. POPE -- DIRECT BY MR. GIBBES

1 A. Of course.

2 Q. All right. And what is that document?

3 A. It's the Asset Purchase Agreement.

4 Q. All right. Now, were you involved in the
5 drafting of that agreement?

6 A. No.

7 Q. All right. Did you have occasion to review
8 that agreement before you undertook the work you did do
9 on -- in this matter?

10 A. As little as possible. That was assigned to
11 another lawyer in the firm.

12 Q. All right. Now, let me also ask you to look
13 at Defendant's Exhibit 7, and ask you if you recognize
14 that as the first amendment to that agreement?

15 A. I do.

16 Q. All right. Would you have also reviewed that,
17 perhaps, as little as possible?

18 A. Yes. And principally to figure out when we
19 were supposed to close, when -- and whatever I was
20 doing was governed by this agreement.

21 Q. Okay. Now, through the date of those two
22 documents, and I believe the first amendment is dated
23 August 1st of 2001 -- is it?

24 A. Yes.

25 Q. Up to that point in time, the agreements

M. POPE -- DIRECT BY MR. GIBBES

1 basically reflect that Anderson County Water
2 Association members were to purchase Duke's retail and
3 wholesale system; is that correct?

4 MS. SPRUILL: Objection to leading, Your Honor.

5 THE COURT: All right. Rephrase please.

6 BY MR. GIBBES:

7 Q. What was your understanding of the state of
8 negotiations as of the time of that first amendment?
9 In other words, which entity was to purchase Duke's
10 wholesale system and which was to purchase the retail
11 system?

12 A. Well, they are listed in the first amendment,
13 the parties to it. Do you want me to read that to you?

14 Q. No, that's all right. Let me ask you this:
15 What -- what was your role in this matter? Your
16 principle role?

17 A. In this agreement?

18 Q. No, in this transaction.

19 A. In the transaction.

20 Q. Yes, ma'am.

21 A. My role was to be sort of the quarterback to
22 make everything happen; and specifically the Water
23 Purchase Agreement.

24 Q. Let me ask you to turn to Defendant's Exhibit
25 29, which is probably in the other notebook. And let

M. POPE -- DIRECT BY MR. GIBBES

1 me ask you if that is a copy of the executed Water Sale
2 and Purchase Agreement?

3 A. It appears to be, March 21, 2002.

4 Q. Okay.

5 A. I imagine it has signatures.

6 Q. Now, let me go back and ask you again, do you
7 recall -- what -- what was your assignment? What was
8 your responsibility with respect to --

9 A. My specific assignment was to draft this
10 agreement to completion, and to be sure that everything
11 else was done properly by the other lawyers working on
12 it.

13 Q. Would you describe for us briefly the process
14 that you went through in drafting the agreement, from
15 the start to the completion?

16 A. When Tom Hutchinson finished the Asset
17 Purchase Agreement, he was pretty much -- had announced
18 that he was slowing his practice down; that he -- in
19 this particular file felt that it would be an easy hand
20 off to another partner, associate, because one part of
21 all this had been completed, which is the Asset
22 Purchase Agreement, which we believed after the first
23 amendment was done.

24 He asked me if I would be willing to take on the
25 remaining -- whatever remained, which I did. And I

M. POPE -- DIRECT BY MR. GIBBES

1 also then had to ask one lawyer to be sure that the
2 Anderson Joint Water Authority complied with all of its
3 requirements under the asset transfer agreement -- or
4 Asset Purchase Agreement. And then I had to ask
5 another lawyer to handle the actual financial
6 transaction, because this Water Sale and Purchase
7 Agreement took on a life of its own.

8 Q. And that was your responsibility?

9 A. And that was mine.

10 Q. All right. How did you go about the process
11 of drafting that agreement? And by that, I mean, who
12 did you meet with? What steps did you take as you
13 began work on that agreement?

14 A. I believe we had many meetings that included
15 everyone and anyone who was interested in the purchase.
16 There were meetings -- I do remember one meeting at the
17 Sandy Springs Water District office, and I think
18 literally there were 200 people there. Every one of
19 the parties pretty much had their own attorney.
20 Everybody was very, very interested in what is this
21 water going to cost.

22 Everybody was interested in everybody getting a
23 fair shake out of the transaction. So we would go from
24 a meeting of 15, sometimes, to a meeting of over 200.

25 Q. And would I be correct in assuming there were

M. POPE -- DIRECT BY MR. GIBBES

1 a series of meetings over the time it took to negotiate

2 --

3 A. Absolutely.

4 Q. -- and sign this agreement?

5 A. Many many meetings.

6 Q. Now, when you undertook the task of drafting
7 the Water Sale and Purchase Agreement, who did you view
8 yourself as representing at that point in time?

9 A. I represented the purchasers.

10 Q. All right. And who was that?

11 A. Well, it's -- do you want me to read them to
12 you?

13 Q. No, but just describe who you mean.

14 A. The cities and special purpose districts that
15 were forming -- and a lot of these items were happening
16 simultaneously. The Asset Purchase Agreement was being
17 reviewed and commented on. At that time, the companies
18 were being changed to districts. The -- Anderson Joint
19 Authority was being created. This Water Sale and
20 Purchase Agreement was being created. There were three
21 or four fairly substantive matters all going on at the
22 same time.

23 Q. With respect to the Water Sale and Purchase
24 Agreement, as I understand your testimony, you
25 represented all the potential members of the Joint

M. POPE -- DIRECT BY MR. GIBBES

1 Water --

2 A. Yes. I was wanting to be positive that we
3 received a fair and clearly written agreement so that
4 everyone felt that they were getting a -- a fair
5 situation.

6 Q. Now, as you set about to draft the agreement,
7 is it fair to say that you prepared multiple drafts of
8 the agreement -- the agreement over a period of time
9 the negotiations took place?

10 A. Yes.

11 Q. And why were you called upon to prepare
12 multiple drafts of the agreement? What led to that
13 being done?

14 A. It was really because we had -- what 13 people
15 -- 13 entities buying, we had 13 lawyers to deal with.
16 We had constituents of those 13 all requesting
17 different things. And this was something very new and
18 different. This was -- this was not a new system.
19 This is not working with people who had never purchased
20 water before, this was simply substituting the entity
21 that was going to provide the water, and each of those
22 entities was going to buy the water for part of the
23 seller, so everybody was working basically toward a
24 common goal, just to get water and get it for a fair
25 price, and have fair terms.

M. POPE -- DIRECT BY MR. GIBBES

1 Q. And what was some of the major items that the
2 Water Sale and Purchase Agreement was supposed to
3 address among the members?

4 A. Those agreements can be done many many
5 different ways. Unfortunately, there was -- I don't
6 want to say overwhelming, but there was a lack of trust
7 among the members who formed the authority. So instead
8 of the Anderson Joint Water Authority, on which each of
9 these people were going to be represented, instead of
10 that entity simply owning whatever and furnishing water
11 at a set price, they all wanted to have a definite
12 share of whatever ownership interest legally could be
13 given to them; such that the agreement was to operate
14 so that everybody felt -- every purchaser felt -- that
15 they owned this and they owned a certain physical sort
16 of, but it couldn't -- I mean, property has to be
17 titled if you're going to do that kind of thing -- but
18 they wanted for it to operate as if -- my remembrance
19 is, that they had their own little water plant within
20 the bigger water plant.

21 Q. Now, given the -- and if you need some water
22 at some point, if you would just please ask. Given
23 what you have described as the sometimes conflicting
24 interest of the members, how did that impact -- how did
25 you view your -- what was your responsibility among

M. POPE -- DIRECT BY MR. GIBBES

1 these conflicting entities?

2 A. I was very -- I had to be, and wanted to be,
3 and felt that I was hired to be completely impartial to
4 the interests of the different purchasers. What I
5 wanted was to be sure that everyone understood the
6 agreement. That if there was a conflict, we sat down
7 and we discussed it, we came to a resolution of it.
8 And that resolution was then recorded within the
9 confines of the agreement.

10 Q. Who was the first one who did the initial
11 draft of the Water Sale and Purchase Agreement?

12 A. I believe I did. I really can't remember, but
13 I -- I -- Leo Hill may have had something to do with
14 the first draft. But if anyone else had anything to do
15 with it, it quickly became mine.

16 Q. All right. And as the weeks and months went
17 by, and various drafts were created, who prepared
18 those?

19 A. I did.

20 Q. And ultimately, who prepared the final
21 document that was signed that we just looked at a
22 little bit ago?

23 A. I did.

24 Q. Now, you mentioned that you felt your role was
25 to be impartial when disputes arose, and to try to be

M. POPE -- DIRECT BY MR. GIBBES

1 fair to everybody. Do you recall a point in time when
2 a dispute did arise about who would serve the Michelin
3 site, the Owens Corning and the BASF site?

4 A. I do.

5 Q. All right. Can you tell us what you recall
6 about how that dispute arose and what steps you took,
7 as the lawyer, to help resolve it?

8 A. I believe that came to my attention. Now,
9 whether or not this was the first time, I have no idea
10 because I'm certain that I was not at every meeting
11 that the purchasers had among themselves. But I do
12 remember that we started having a lot of the members at
13 the city hall. And they had adequate room. It was
14 better to meet there because it was more centrally
15 located. We had been meeting at the Sandy Springs
16 Water Commission office. And we decided, I believe, it
17 was easier for folks to get to the city hall. So I
18 believe that's where we ended up meeting. And I
19 believe it was after that, that this came up.

20 Q. And what do you recall -- what do you recall
21 the nature of the dispute being, when it arose?

22 A. Well, I can tell you what happened -- as it
23 happened. This was not the only time -- you know,
24 these documents were extraordinarily thick. They were
25 extraordinarily complicated and they were very -- I

M. POPE -- DIRECT BY MR. GIBBES

1 would say fairly tough for a layman or an attorney to
2 comprehend every single thing that was in it, and then
3 reflect to understand how it would affect them.

4 So a lot of the things unfortunately that became
5 the biggest disputes happened after everyone thought we
6 had put everything to bed. Now, that may be a normal,
7 natural thing to happen or may not be. I will tell you
8 in practice, it doesn't happen very much. Because if
9 you had the correct experience and education, you bring
10 those matters up first.

11 But in this instance, there were at least two
12 very, very hotly contested issues that had to be
13 resolved for the agreement to be completed, and that
14 was one of them.

15 Q. Let me ask you if you would turn to
16 Defendant's Exhibit 12, please.

17 A. I'm there.

18 Q. Do you recognize this document?

19 A. I do.

20 Q. All right. This appears to be the draft of
21 the Water Sale and Purchase Agreement with a
22 handwritten note in the upper right hand corner,
23 11/20/01; is that correct?

24 A. That's what it says.

25 Q. And then it does have the firm names of Hill &

M. POPE -- DIRECT BY MR. GIBBES

1 Hill, that would be Mr. Leo Hill, right?

2 A. Right.

3 Q. And Haynsworth Sinkler Boyd -- it looks like
4 your firm had become by then; is that correct?

5 A. Right.

6 Q. Now, if you turn over to section 6.04, which
7 is on -- using those numbers on the bottom right hand
8 -- I suspect you can find it at page 1028, using the
9 numbers in the bottom right corner.

10 A. Okay.

11 Q. There is a clause, section 6.04, Territory
12 Boundaries.

13 A. Uh-huh.

14 Q. Did you draft that language to the best of
15 your knowledge?

16 A. With the exception of the third paragraph that
17 Mr. Hill inserted.

18 Q. Well, let's limit ourselves -- I think for
19 purpose of this lawsuit -- to the first two paragraphs.

20 A. Okay.

21 Q. And would it -- would you have drafted those
22 paragraphs?

23 A. Yes.

24 Q. When you drafted those paragraphs, did you do
25 so to reflect what you then thought the agreement of

M. POPE -- DIRECT BY MR. GIBBES

1 the parties to be?

2 A. Of course.

3 Q. Excuse me.

4 A. Of course.

5 Q. And what was the purpose of this paragraph?

6 A. The purpose of this paragraph was to show who
7 or which entity was going to serve water where.

8 Q. All right. Now, do you recall whether there
9 was a territorial map already prepared about the time
10 of this first draft or did it come about later?

11 A. I do not remember.

12 Q. All right. Let me show you -- this is a blown
13 up copy, obviously, of what became Exhibit D to the
14 final agreement; do you recognize this?

15 A. I do.

16 Q. And what was your understanding of what this
17 map was to portray?

18 MS. SPRUILL: Objection, Your Honor. I don't
19 understand --

20 MR. GIBBES: Or what does it --

21 MS. SPRUILL: -- as it relates to the intent of
22 the parties. And she didn't create the map.

23 MR. GIBBES: Well, she drafted the agreement that
24 referred to the map.

25 THE COURT: She's testifying as a lay witness;

M. POPE -- DIRECT BY MR. GIBBES

1 right?

2 MS. SPRUILL: She's testifying as a lay witness.

3 THE COURT: Okay. Overruled. Go ahead.

4 BY MR. GIBBES:

5 Q. What was your understanding of what this map
6 showed?

7 A. That map was to show clearly where people
8 were, where the different purchasers were to serve --

9 MS. SPRUILL: Your Honor, may I elaborate slightly
10 on my objection?

11 THE COURT: Sure.

12 MS. SPRUILL: She's testifying as a lay witness,
13 pursuant to rule 701, a lay witness cannot testify as
14 to matters that require special knowledge, skill,
15 experience or training. So she cannot testify to fact
16 matters that require her to draw upon her knowledge as
17 a lawyer. So her testimony to what she, as a lawyer,
18 thinks certain provisions or certain maps mean, is not
19 admissible as lay testimony under rule 701 of the Rules
20 of Evidence.

21 THE COURT: Mr. Gibbs.

22 MR. GIBBES: Your Honor, all she's given is her
23 understanding of the agreement of the parties at the
24 time, what the map was intended to reflect based upon a
25 conversation of West Anderson and other members. It's

M. POPE -- DIRECT BY MR. GIBBES

1 not expert testimony. It doesn't require special
2 knowledge.

3 THE COURT: Yeah. And the court is not taking it
4 as expert testimony. I'm taking this as a lay witness,
5 the same as anybody else sitting in this courtroom who
6 is a non-lawyer, would say that that's what their
7 opinion was.

8 MS. SPRUILL: Your Honor, may I read to you the
9 Court of Appeals, just last week, for that -- a new 701
10 case?

11 THE COURT: All right.

12 MS. SPRUILL: I'm happy to pass it up. In that,
13 there is a parenthetical that says "a lay witness may
14 only testify regarding direct observations unless
15 qualified as an expert". She can testify to what she
16 --

17 THE COURT: She has --

18 MS. SPRUILL: -- smelled, touched, tasted, saw and
19 heard, but not --

20 THE COURT: All right..

21 MS. SPRUILL: -- an opinion about any of this.

22 THE COURT: She can't testify -- are you telling
23 me that she can't testify as to what her impression of
24 it is as a lay person?

25 MS. SPRUILL: I don't believe that she can. I

M. POPE -- DIRECT BY MR. GIBBES

1 think she can testify to what it says, to what she
2 wrote, to the facts, to what she observed, but not to
3 what she thought.

4 THE COURT: Well, hold on a second. Let me get to
5 Mr. Dwight Edwards' testimony. I believe Mr. Nicholson
6 talked to him about that same map, did he not?

7 MS. SPRUILL: In that case, he is the party, and
8 his intentions are relevant to this dispute. Here, we
9 have a lay witness who is here testifying as the
10 scrivener of these agreements. Mr. Gibbes can ask her
11 what she heard, who she talked to, subject to hearsay
12 objections or anything else, but --- intent as is
13 expressed in the agreement she wrote.

14 THE COURT: Mr. Gibbes.

15 MS. SPRUILL: We don't get a secondhand, after the
16 fact, interpretation of it.

17 MR. GIBBES: Your Honor, let me ask a few more
18 questions.

19 THE COURT: All right. Ask her some questions.

20 MR. GIBBES: How about that. Let me try this.

21 BY MR. GIBBES:

22 Q. Ms. Pope, in the course of preparing the
23 drafts of these agreements, you told us that you met
24 with the various potential members -- or the members of
25 boards of the Joint Water System; is that correct?

M. POPE -- DIRECT BY MR. GIBBES

1 A. Ask again, please.

2 Q. In the course of working on this Water Sale
3 and Purchase Agreement, you met multiple times with the
4 members of the Joint Water System -- what would become
5 the Joint Water System; is that correct?

6 A. Yes.

7 Q. And you met with their attorneys?

8 A. Yes.

9 Q. Those that had one. And in the course of
10 those negotiations, as I understand it, you did your
11 best -- as an impartial party -- to understand what the
12 parties' agreement was and what they intended; did you
13 not?

14 MS. SPRUILL: I object to the leading again, Your
15 Honor. He needs to ask her questions.

16 THE COURT: Okay.

17 BY MR. GIBBES:

18 Q. Is that correct? I'm sorry.

19 A. It was my responsibility to turn the contract
20 into a reflection of what the group, as a whole,
21 desired. The -- the map was not produced, I don't
22 believe, until we were fairly into the discussions
23 about all of this. Because, if you -- I mean, if
24 anybody reads the agreement, they will see that that
25 was not the only thing in this agreement. I mean, many

M. POPE -- DIRECT BY MR. GIBBES

1 many parts -- in fact, it's on page 22, I believe, of
2 this agreement that I'm looking at. And it talks about
3 a territorial map because, at that time, I don't know
4 that we had one. I knew we had to have one before we
5 could sign, because that was going to be very
6 important. But I don't think we actually got the map
7 -- because I imagine there was a lot of disputes over
8 the way it was drawn.

9 Q. I think the evidence will show you are
10 correct, that there was not a map at that point in
11 time, that had probably been finalized --

12 MS. SPRUILL: Objection, Your Honor. Mr. Gibbes
13 is testifying --

14 MR. GIBBES: Let me ask you -- they did a lot of
15 it on their side, too.

16 THE COURT: I understand, but let's...

17 BY MR. GIBBES:

18 Q. Let me ask you to go back to section 6 0 4,
19 Ms. Pope. And you told the court you drafted this; is
20 that correct?

21 A. I did.

22 Q. All right. And section 6 0 4 says, quote, "In
23 order to produce successful planning, financing, and to
24 avoid future disputes, the parties have agreed upon a
25 territorial map of the territory of the parties of this

M. POPE -- DIRECT BY MR. GIBBES

1 agreement and service area, the territory of other
2 entities who are assigned in this joint system" -- end
3 quote. That's what it says, is it not?

4 A. Correct.

5 Q. What was your -- what was your understanding
6 at the time of why a territorial map would be attached
7 as part of this paragraph?

8 MS. SPRUILL: Again, Your Honor, the same
9 objection.

10 MR. GIBBES: Based upon your discussions with the
11 parties, what was your understanding of why they wanted
12 a territorial map attached?

13 A. Some of this, Your Honor, is going to get into
14 expert --

15 THE COURT: Yeah.

16 A. I mean, it's going to get into how I
17 approached this as a lawyer.

18 THE COURT: Mr. Gibbs, it's -- let me see the
19 parties up there.

20 (Whereupon, a bench conference was held.)

21 THE COURT: Okay. Thank you.

22 BY MR. GIBBES:

23 Q. Ms. Pope, let me ask you this -- and I'll try
24 to streamline things a little bit. Do you recall at
25 some point that a clause was inserted in the background

M. POPE -- DIRECT BY MR. GIBBES

1 section of this draft agreement that specifically
2 mentioned by name, Michelin, BASF and Owens Corning?

3 A. Yes.

4 Q. And we'll look at that in a little bit.

5 A. Yes.

6 Q. Let me ask you to look at Defendant's Exhibit

7 12. It's this draft dated November 20, --

8 A. The one we are in?

9 Q. Excuse me?

10 A. The one we are in?

11 Q. Yes. Is that clause, that I just referred to,
12 in this draft?

13 A. No.

14 Q. All right. Now, let me ask you to turn to
15 Defendant's Exhibit 13, and ask you if this appears to
16 be a further draft of the agreement that bears the date
17 November 21, 2001 at the top, and a notation, second
18 version of first draft?

19 A. Yes.

20 Q. All right. Do you see the clause in the -- is
21 there a clause in the background section that
22 specifically addresses Michelin, BASF, and Owens
23 Corning?

24 A. I believe there is a change, but I do not see
25 the reference to the specific industries.

M. POPE -- DIRECT BY MR. GIBBES

1 Q. All right. Let me ask you, if you would, look
2 at section 7 0 2, which is on page 1560 --

3 A. 7 0 2?

4 Q. 7 0 2.

5 A. Okay.

6 Q. And let me ask you if 7 0 2 appears to be a
7 fairly similar, if not a identical version of the
8 territorial boundary clause that appears -- that
9 appears in section 6 0 2 of the prior draft?

10 A. You're asking me if the first one and the
11 second one are similar?

12 Q. Generally similar?

13 A. It was then 6 0 4, it changed to 7 0 2. We
14 obviously added an article somewhere between these two
15 -- they look similar.

16 Q. Now, -- and take a minute to review this draft
17 if you need to -- but to the best of your knowledge and
18 recollection, is this the clause in the agreement that
19 addresses the service areas that each member was
20 intended to serve?

21 MS. SPRUILL: I object to the question. The
22 agreement says what it says.

23 BY MR. GIBBES:

24 Q. I guess really what I'm asking you, Ms. Pope,
25 is there any other clause in this agreement, to your

M. POPE -- DIRECT BY MR. GIBBES

1 recollection, that wasn't put in by you to address the
2 service area that each member would serve; or is this
3 the primary clause?

4 A. To my recollection, other than the background
5 that did change from time to time, this is the section
6 that delineated the territories.

7 Q. Let me ask you if you would look at
8 Defendant's Exhibit 16, and ask you if this appears to
9 be yet another draft dated December 2, 2001 of this
10 agreement?

11 A. Yes.

12 Q. All right. And if you look at the background
13 section, do you see the clause that specifically
14 references BASF, Michelin and Owens Corning?

15 A. I do not see a reference to the industries.

16 Q. All right. Let me ask you if you would turn
17 to section 6 0 2 on page 1518.

18 A. All right.

19 Q. And can you tell me what this clause is?

20 A. 6 0 2?

21 Q. Yes, ma'am.

22 A. Is the territorial boundaries.

23 Q. All right. So at least in the first three
24 drafts, there is a territorial boundary section, but
25 not the background clause we've been talking about?

M. POPE -- DIRECT BY MR. GIBBES

1 A. Um, not -- not -- it did become more detailed.

2 Q. All right. Now, let me ask you to turn back
3 to Defendant's Exhibit 19. And this appears to be a
4 draft -- 5th draft, December 15, 2001; does it not?

5 A. It does.

6 Q. All right. Now, let me ask you to review the
7 background section here, and tell us if there is a
8 specific clause referencing the three industries?

9 A. On page 2, it begins a paragraph that states
10 it.

11 Q. All right.

12 A. A reference to the entities.

13 Q. Did you draft this clause?

14 A. I did.

15 Q. And do you recall what caused you to include
16 this clause in the agreement at this point?

17 A. I suppose -- and all I can do is call on my
18 memory -- but it was around this time that the parties
19 were becoming very suspicious of the others, in terms
20 of who's going to do what, and who's going to do what
21 to whom. You have to remember that -- and this is a
22 little bit of law that I have to explain if -- stop me
23 if you don't want me to.

24 But in -- a special purpose district is created
25 by the General Assembly. It is given a specific area

M. POPE -- DIRECT BY MR. GIBBES

1 that it serves. Some of them are metes and bounds,
2 some of them use a more general description, but there
3 is an absolute section that sets out the boundaries.

4 Prior to the time that all of this was going on,
5 everybody was served on a retail basis, I believe, by
6 Duke because there was no real public entity that had a
7 water plant. Duke owned the water plant and they sold
8 water to some of these folks, who then distributed it.
9 But there was not all that much tear -- I suppose -- on
10 the part of a lot of these people, as to whether or not
11 they were in the area of this water company, or in the
12 incorporated limits of the City of Anderson. Because
13 if they weren't, then they got water from -- I guess --
14 Duke directly.

15 And so everybody, which is sort of -- everybody
16 was getting water from Duke. Some of them were getting
17 it from Duke to another entity, then to them. Those
18 folks who were outside of a water company or a City, or
19 a City service area -- because cities may certainly
20 serve outside their boundaries -- they were getting
21 water through that particular City. But water
22 companies are proscribed as to where they can serve
23 pretty much like special purpose districts. When you
24 file their certificate of incorporation, you give a
25 pretty good metes and bounds description of where they

M. POPE -- DIRECT BY MR. GIBBES

1 are going to serve, so the people know from whom they
2 are going to get water.

3 I don't know if this is a lay opinion -- not an
4 opinion, but an observation, but it occurred to folks
5 that there were going to be some people who were direct
6 customers of Duke because they were outside the
7 companies, and perhaps they were not being served by
8 the cities outside their boundaries -- Mr. Hill
9 referred to those people as in "no man's land". Prior
10 to this transaction, those people didn't care because
11 they were getting water -- I guess a reasonable price
12 from Duke.

13 But once Duke sold and got out of the business,
14 then those people had to be customers of somebody. You
15 can imagine the fight over who was going to provide
16 service to those people. And it was a huge -- as I
17 recall -- it was a huge mess. A huge fight. A lot of
18 people had not really thought about it. A lot of the
19 customers had not thought about it, because basically
20 everybody thought all this was going to be was to
21 change the entity that owned the water plant, owned the
22 withdrawal permit, own the lines from one entity to
23 another, and nothing was going to really change.

24 Well, if you are a student of public law, and
25 the area that I'm in, there are many different laws

M. POPE -- DIRECT BY MR. GIBBES

1 that govern what rates can be. And whether you're in a
2 special purpose district, or in a city, or served by a
3 city outside its boundaries, those rates can be
4 different, because you've got a different entity.

5 And it became a fierce competition of who was
6 going to provide service to those folks that Mr. Hill
7 said were in no man's land. So I didn't care. It was
8 not up to me. It was none of my business who served
9 these areas. In the end, my client was going to be
10 Anderson Joint.

11 My client was each of the purchasers, sort of on
12 behalf of Anderson Joint, because Anderson Joint was
13 just being formed. So I -- I -- it would have been
14 nuts for me to have any care about from whom these
15 people got service. I just wanted -- I wanted
16 everybody to know -- and this is getting into where I
17 was a lawyer -- but I wanted everybody to know from
18 whom they were getting service if they were -- you
19 know, the customers out there -- and many attended the
20 meetings. And I wanted each of the purchasers to know
21 where they had the right to sell water. Because if you
22 didn't make that fairly -- or as transparent and laid
23 out in the agreement so that people knew what they were
24 supposed to do, then I knew we would be right here.

25 Q. All right. Now, you saw that you wanted to --

M. POPE -- DIRECT BY MR. GIBBES

1 I don't remember the exact words, but lay out so
2 everybody knew exactly where they would serve, is that
3 correct?

4 MS. SPRUILL: Your Honor, I'm not completely sure
5 that was the testimony.

6 MR. GIBBES: Well, correct me if I'm wrong.

7 THE COURT: She can say No.

8 A. Ask me again, please.

9 BY MR. GIBBES:

10 Q. One of the things you were trying to be sure
11 you accomplished as the impartial lawyer for the
12 members, was to assure that each knew where they were
13 to serve?

14 A. Is that not getting into expert testimony?

15 MS. SPRUILL: I believe that it is, and I believe
16 the testimony could be characterized as the folks they
17 were to serve, which is a different thing. I think Mr.
18 Gibbs' question could be tailored to match the
19 language in the clause he's asking about, and we would
20 avoid this problem.

21 THE COURT: Well, let's say this, the court knows
22 the purpose of the metes and bounds description that
23 would be given as well as the map. It is to define an
24 area. And, again, we don't have a jury here. The
25 court -- that's the whole purpose of the metes and

M. POPE -- DIRECT BY MR. GIBBES

1 bounds description. That's the whole purpose of a map.

2 MR. GIBBES: All right.

3 BY MR. GIBBES:

4 Q. All right. Ms. Pope, let me ask you this:
5 Let's go back to Defendant's Exhibit 19. And you have
6 pointed out that on page 2 is the clause that refers to
7 the three industries?

8 A. Right.

9 Q. Now, let me ask you to look back at section 6,
10 which begins on page 1825 --

11 A. It begins on page --

12 Q. If you look at the bottom right hand corner,
13 those Bates numbers, it's 1825.

14 A. Okay.

15 Q. And let me ask you to look through section 6,
16 and tell me if this draft includes the territory
17 boundary clause that was in the prior ones?

18 A. 6 0 2, in reading it, does not.

19 Q. Do you have any recollection of why the
20 territorial boundary clause was removed from this
21 draft?

22 A. No, I do not.

23 Q. Let me ask you then to turn to Defendant's
24 Exhibit 23, please. Are you there? I'm sorry. This
25 is labeled 6th draft January 17, 2002; is that correct?

M. POPE -- DIRECT BY MR. GIBBES

1 A. Right.

2 Q. All right. And if you look at the second
3 page, the clause that refers to the three industries is
4 in this draft, is it not?

5 A. It is.

6 Q. All right. And then if you go back to page
7 2672, does this draft contain the -- a version of the
8 territory boundary clause?

9 A. Yes.

10 Q. At what section?

11 A. 6 0 2.

12 Q. All right. Now, to the extent that this
13 version of 6 0 2 may vary from the prior versions, are
14 you the person who made the changes if they were?

15 A. I hope not because boundaries is misspelled.

16 Q. Well, let me help you out on that. Let me ask
17 you to look at exhibit 24 -- Defendant's Exhibit 24.
18 And this is a 7th draft about a week later on January
19 28, 2002. And if you will turn to page 2331, you will
20 find section 6 0 2 is included; do you not?

21 A. I do.

22 Q. And the misspelling has been corrected; is
23 that right?

24 A. I must have done that.

25 Q. We'll give you credit for that one and not the

M. POPE -- DIRECT BY MR. GIBBES

1 prior one. All right. Now, to be complete, if you
2 look back at the second page of this draft --

3 A. Are you talking about the --

4 Q. Defendant's Exhibit 24, the one we were
5 looking at -- and if you look back at the second page
6 of this draft, the clause referring to the three
7 industries is also included; is that correct?

8 A. Yes.

9 Q. Now, let me ask you to go back now to the
10 actual Water Sale and Purchase Agreement, which is
11 Defendant's Exhibit 29, I think. Let me look, 29.

12 A. Okay.

13 Q. I stapled it together today. I dropped my
14 notes yesterday and they went here and there and
15 everywhere. Let me ask you if you would look at
16 Defendant's Exhibit 29, and I believe you previously
17 identified this as a copy of the final signed Water
18 Sale and Purchase Agreement; did you not?

19 A. I may answer that yes because it's signed.

20 Q. All right. And if you look at the background
21 section of this agreement, on the page that's got Bates
22 number 5000221, it includes the clause that refers to
23 the three industries, does it not?

24 A. It begins that paragraph, yes.

25 Q. And then if you turn back to page 254, would I

1 be correct that you will find a section 6 0 2 that is
2 titled "Territorial Boundaries"?

3 A. Yes.

4 Q. All right. And this section refers to a
5 territorial map, does it not?

6 A. The last sentence says, "a territorial map is
7 attached hereto as Exhibit D".

8 Q. And if you, in fact, turn to the last page of
9 this document, by this time there is actually a
10 territorial map attached; is there not?

11 A. There is.

12 Q. And though this is a somewhat poor copy, it is
13 the smaller version of what appears on the board to the
14 right; it appears to be?

15 A. It looks like it.

16 Q. All right. In comparing the final draft of
17 this -- did you prepare the final draft of this
18 agreement based upon the instructions you received from
19 the members, who you viewed to be your clients?

20 A. Yes.

21 Q. All right. And in preparing the final draft
22 that was signed by the members, did you do your best to
23 assure it reflected their agreement?

24 A. That was my role.

25 MR. GIBBES: Your Honor, may I have just one

1 minute?

2 THE COURT: Certainly.

3 MR. GIBBES: Your Honor, I think that's all the
4 questions we have for Ms. Pope.

5 THE COURT: All right. Thank you. Yes, ma'am.

6 MS. SPRUILL: Your Honor, I expect it to be very
7 brief. May I have about five minutes to look over my
8 notes?

9 THE COURT: Yeah, I tell you what, I think that I
10 have someone in the courtroom who came all the way from
11 Spartanburg to pick up something, so why don't we take
12 15 minutes while I take care of that.

13 MS. SPRUILL: Perfect, Your Honor.

14 (After a recess, court reconvened.)

15 MS. SPRUILL: I'll let her take her seat, so we
16 can tell her we have no questions for her. Thank you
17 for being with us today.

18 THE COURT: Thank you. Please be careful.
19 Anything further, Mr. Gibbs?

20 MR. GIBBES: Your Honor, that concludes the City's
21 case.

22 THE COURT: Okay. Anything from the Plaintiff?

23 MS. SPRUILL: Your Honor, I'd like to make a very
24 brief directed verdict motion for all the grounds
25 stated in our pretrial brief.

1 And I also, on their counterclaims, would like
2 to argue that they haven't put forward any evidence of
3 unjust enrichment or negligent misrepresentation, or
4 any evidence of damages relating to the provision of
5 water to Michelin II. I believe Mr. Caldwell's
6 testimony was everything he had on his list were Joint
7 System assessments to the City, and none of them had
8 anything to do specifically with Michelin as a whole or
9 Michelin II specifically. And no -- none of those
10 calculations have been broken out to distinguish
11 between Michelin and Michelin II.

12 THE COURT: Mr. Gibbes?

13 MS. SPRUILL: And that's all, Your Honor.

14 MR. GIBBES: Your Honor, on the last point, we
15 would respectfully disagree. That's not what Mr.
16 Caldwell's testimony was.

17 The City maintains its books for the whole
18 system, all the service areas. It's not broken out.
19 Mr. Caldwell did break out the costs that are related
20 to the future expansion in the green area that is shown
21 on that exhibit. Though I'll grant you, it is
22 allocation for purposes of trial, the City had no other
23 way to do it but to do it that way. And so there is
24 evidence in the record that would support the City's
25 damage claim.

1 I'll be glad to argue any other part of her
2 motion for directed verdict if Your Honor wants to hear
3 me on it. I would also be careful to renew our motion
4 for directed verdict, on the same ground as I made
5 before, which I understand the court is not. But for
6 the record, I would renew that.

7 MS. SPRUILL: And a very brief reply to the
8 damages issue, Mr. Caldwell's testimony that every one
9 of those things was as an assessment made to the City
10 as part of its membership on the Joint System, and none
11 of it had anything specifically to do with any
12 particular customer or site. They're just not fairly
13 allocable to Michelin property -- the first Michelin
14 plant or the second Michelin plant. Some of them were
15 back in 2007. They're just unrelated to the claims in
16 this case.

17 THE COURT: Well, I'm going to deny your motion,
18 Ms. Spruill, because there was testimony -- there is
19 testimony in -- and I followed that pretty carefully
20 because I was watching those formulas. I do like that,
21 so I was really following along there. And there is,
22 at least, a scintilla of evidence there that some part
23 of that is attributable to Michelin II -- as the
24 Plaintiff characterizes it and not Michelin I. So that
25 motion is denied.

1 Your renewed motion is also denied based on the
2 same ruling of the court yesterday, the same factors.
3 I want to make sure everybody is protected on the
4 record, so.

5 Anything else for us to protect on the record?

6 MS. SPRUILL: No, Your Honor. Not from us.

7 MR. GIBBES: Thank you for hearing us.

8 THE COURT: Yes, sir. I want to say this, I
9 appreciate everybody here being professional and very
10 prepared on this case. I do appreciate the way -- the
11 congeniality really between the lawyers. I think we,
12 in South Carolina, have been -- a good Bar to tell you
13 the truth about it. I hear some of these horror
14 stories, but I have yet to see one of those horror
15 stories, and I've practiced law 25 years, and I don't
16 have any horror stories about lawyers, but I appreciate
17 that.

18 Again, I think we have extended the deadline.
19 It's not a firm ten days. It's going to be the
20 following Monday, because it falls on a Saturday. I'm
21 good with math, but I'm just not good with a calendar.

22 Anyway, Monday at noon, I believe, was proposed.
23 That's fine. If you'll get that to my law clerk by
24 email, the five bullet points and the -- any letter
25 that you want to -- it's one of those, I'm cutting the

1 grass or I'm doing something, and I happen to think of
2 something. Just send that to us in letter form.

3 Anything else before we --

4 MS. SPRUILL: I appreciate it, Your Honor.

5 MR. GIBBES: No, sir.

6 THE COURT: Okay. The court is adjourned.

7 MR. GIBBES: Thank you, very much.

8 MR. NICHOLSON: Thank you.

9 THE COURT: Thank you. If I could see the lawyers
10 -- I think Adrienne -- and we don't need this on the
11 record.

12 (Whereupon, the hearing adjourned.)

13

14

15

16

17

18

19

20

21

22

23

24

25