

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 17 2018

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate (Court of Appeals) Case No. 2015-001894

Commissioners of Public Works of the City of
Laurens, South Carolina, also Known as the Laurens
Commission of Public Works, ... Respondents,

v.

City of Fountain Inn, South Carolina, ... Petitioner.

APPENDIX

MCNAIR LAW FIRM
Robert L. Widener, SC Bar No. 6089
P.O. Box 11390
Columbia, SC 29211
Telephone: 803.799.9800
Facsimile: 803.753.3278

Bernie W. Ellis, SC Bar No. 64841
P.O. Box 447
Greenville, SC 29602
Telephone: 864.271.4940
Facsimile: 864.271.4015

Attorneys for Respondent
Commissioners of Public Works of the
City of Laurens, South Carolina, a/k/a
Laurens Commission of Public Works

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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381

Attorneys for Petitioner
City of Fountain Inn, South Carolina

INDEX TO APPENDIX

Court of Appeals Opinion No. 5559 (filed May 16, 2018).....	1
Petition for Rehearing.....	11
Order of Court of Appeals Denying Petition for Rehearing.....	18
Brief of Appellant.....	20
Brief of Respondents	39
Reply Brief	77
Record on Appeal	93

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Commissioners of Public Works of the City of Laurens,
South Carolina, also known as the Laurens Commission
of Public Works, Respondent,

v.

City of Fountain Inn, South Carolina, Appellant.

Appellate Case No. 2015-001894

Appeal From Laurens County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5559
Heard October 2, 2017 – Filed May 16, 2018

AFFIRMED

David W. Holmes, of Holmes Law Firm, and Boyd
Benjamin Nicholson, Jr. and Sarah Patrick Spruill, both
of Haynsworth Sinkler Boyd, PA, all of Greenville, for
Appellant.

Robert L. Widener, of McNair Law Firm, PA, of
Columbia, and Bernie W. Ellis, of McNair Law Firm,
PA, of Greenville, both for Respondent.

KONDUROS, J.: In this appeal from a declaratory judgment action, the City of Fountain Inn (Fountain Inn) appeals the circuit court's determination Fountain Inn may not provide natural gas service in a particular area without the consent of the Commissioners of Public Works of the City of Laurens, South Carolina, also

known as Laurens Commission of Public Works, (LCPW) because that area was within LCPW's "designated service area." We affirm.

FACTS/PROCEDURAL HISTORY

LCPW is the entity established by the City of Laurens to provide combined utility services, including natural gas, to residential, commercial, and industrial customers. Fountain Inn also provides natural gas services. Both parties sell natural gas to customers inside their respective corporate limits as well as to customers outside those limits as allowed by section 5-7-60 of the South Carolina Code (2004).¹

During October 1992, officials from both municipalities met to discuss establishing a boundary line in an unincorporated area between the two cities to prevent multiple gas lines in an area. On November 11, 1992, LCPW General Manager Coleman Smoak Jr. sent a letter to Fountain Inn's natural gas System Manager, Carey Elliott, and enclosed a map (the Map) detailing the proposed territorial boundary between the two gas systems. Elliott replied on November 17, 1992, expressing agreement regarding the accuracy of the Map, stating the Map was "in agreement with the Fountain Inn City Council." On November 25, 1992, Smoak responded, indicating a resolution was being prepared for adoption by both municipalities' governing bodies.

However, the boundary line included in the Map was not formally ratified by either the Fountain Inn City Council or by LCPW. For the most part, both parties observed the boundary line for almost two decades, although one of the parties occasionally exceeded the boundary line with the permission of the other party. Nevertheless, some disagreements occurred in which Fountain Inn accused LCPW of serving customers in its territory.²

In 2011, LCPW was contacted about providing natural gas service to an industrial customer, ZF Transmissions, the first company to build in a newly constructed area named Owings Industrial Park. Owings Industrial Park is located entirely within

¹ "Section 5-7-60 provides in part that any municipality may provide its services outside its corporate limits by contract, and the statute defines a designated 'service area' to mean the area in which a particular service is being provided." *Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (Ct. App. 2003).

² At the time the boundary line was initially discussed, both parties already had a few customers on the opposite sides of the line.

LCPW's portion of the boundary line on the Map. The economic development director for Laurens County Development Corporation later informed LCPW that Fountain Inn had also submitted a proposal on the same project. LCPW, Fountain Inn, and Clinton Newberry Natural Gas Authority³ met to discuss the territory issue but were unable to reach a resolution of the matter.⁴ Ultimately, ZF Transmissions accepted LCPW's bid, and they signed a contract.

On March 30, 2011, LCPW filed a complaint seeking a declaratory judgment that Fountain Inn could not provide natural gas in LCPW's service area pursuant to section 5-7-60.⁵ It also sought an injunction to prohibit Fountain Inn from providing natural gas services in LCPW's service area. On November 14, 2011, the circuit court denied the injunction, finding it did not appear LCPW would suffer any damage prior to trial because LCPW did not allege "there were any other substantial customers in the disputed area who would require natural gas service in the near future."⁶ Subsequently, both parties filed motions for summary judgment. The circuit court denied both motions and found genuine issues of material fact needed to be decided at trial.

The circuit court conducted a bench trial on March 20, 2014. On cross-examination, Thomas Pitman, the gas manager for Fountain Inn, testified Fountain Inn had to run a new line to provide gas service in Owings Industrial Park because it did not previously have a line there. On redirect, Pitman indicated LCPW also had to build a line to connect to ZF Transmissions' facility. In rebuttal, Dale Satterfield, the former general manager of LCPW, indicated an existing line was already in place when LCPW procured a contract with ZF. He stated LCPW only had to tap into its existing line like it does with any new customer. He also testified that unlike LCPW, Fountain Inn had to run a main line to service the Owings Industrial Park because it did not have one in place at the time.

³ Clinton Newberry Natural Gas Authority is another natural gas provider not a party to this case.

⁴ The Public Service Commission regulates some other competing providers of natural gas services because those are not owned by municipalities or other governments.

⁵ In addition to its action under section 5-7-60, LCPW initially sought relief under breach of contract and promissory estoppel theories, but it abandoned those causes of action and only sought relief at trial under section 5-7-60.

⁶ Currently, Fountain Inn provides natural gas to Uniscite, the second company established in Owings Industrial Park.

On September 26, 2014, the circuit court issued an order finding pursuant to section 5-7-60, LCPW had established a designated service area on the southeastern side of the boundary line shown on the Map and thus Fountain Inn may not provide natural gas service in that area without LCPW's permission. The court reasoned the undisputed testimony demonstrated LCPW had "furnished natural gas service in [the contested] area for over two decades" and also had "the infrastructure to provide that service on an ongoing basis." The court also noted LCPW passed a resolution certifying LCPW provides natural gas service to the contested area and it budgeted to do so in accordance with section 5-7-60. Fountain Inn filed a motion to amend, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

The parties disagree on the proper standard of review for this case. "Declaratory judgment actions are neither legal nor equitable and[] therefore, the standard of review depends on the nature of the underlying issues." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). "To determine whether an action is legal or equitable, this [c]ourt must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought." *Lollis v. Dutton*, 421 S.C. 467, 478, 807 S.E.2d 723, 728 (Ct. App. 2017) (quoting *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009)). "The character of the action is generally ascertained from the body of the complaint, but when necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Sloan v. Greenville Cty.*, 380 S.C. 528, 534, 670 S.E.2d 663, 666-67 (Ct. App. 2009). "If the character of the action appears with sufficient clearness in the body of the complaint, it must control, unaffected by the prayer for relief or the intention or characterization of the pleader." *Bramlett v. Young*, 229 S.C. 519, 531, 93 S.E.2d 873, 879 (1956) (quoting *Speizman v. Guill*, 202 S.C. 498, 514-15, 25 S.E.2d 731, 739 (1943)). "While the prayer constitutes no part of the plaintiff's cause of action, 'it is an element that may properly be considered in determining the legal or equitable character of an action, and[] whe[n] the complaint states facts which would support either a legal or an equitable action, the relief demanded will ordinarily determine its character.'" *Id.* (citation omitted) (quoting 1 C.J.S. *Actions* § 54 at 1155).

Fountain Inn asserts the proper standard of review to apply is that for the review of a request for an injunction. "The power of the court to grant an injunction is in equity." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d

687, 689 (2006). An injunction is a drastic and "extraordinary equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party" when no adequate remedy exists at law. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). "In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence." *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008). "However, we are not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." *Straight v. Goss*, 383 S.C. 180, 192, 678 S.E.2d 443, 449 (Ct. App. 2009). "Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

However, LCPW contends the standard of review is that interpreting a statute and thus is at law. "Statutory interpretation is a question of law" *Barton v. S.C. Dep't of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 414, 745 S.E.2d 110, 120 (2013). Additionally, "[t]he determination of legislative intent is a matter of law. *Wehle v. S.C. Ret. Sys.*, 363 S.C. 394, 402, 611 S.E.2d 240, 244 (2005). "This [c]ourt reviews all questions of law de novo." *Lollis*, 421 S.C. at 477, 807 S.E.2d at 728 (quoting *Fesmire*, 385 S.C. at 302, 683 S.E.2d at 807). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "The [c]ourt will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id.* at 600, 675 S.E.2d at 415.

Because the resolution of this matter turns on the interpretation of section 5-7-60, the appropriate standard of review for this case is that for the interpretation of a statute, which is an action at law.

LAW/ANALYSIS

Fountain Inn maintains the circuit court erred by finding LCPW could exclude Fountain Inn from providing natural gas service to customers located outside the boundaries of either city pursuant to section 5-7-60 of the South Carolina Code. It asserts a municipality is limited in its ability to serve outside of its municipal limits and LCPW has not established a designated service area. It further contends the

cases relied on by the circuit court for establishing a designated service area are distinguishable. We disagree.⁷

"Our constitution mandates 'home rule' for local governments." *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 37, 530 S.E.2d 369, 373 (2000) (citing S.C. Const. art. VIII). "Implicit in Article VIII is the realization that different local governments have different problems that require different solutions." *Id.* (quoting *Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 230, 464 S.E.2d 113, 120 (1995)). Article VIII and the South Carolina Code

bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the Constitution and general law of the state.

Williams v. Town of Hilton Head Island, S.C., 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993).

"The Home Rule Act of 1975 completely rewrote the powers of municipalities in this [s]tate. [Section] 5-7-60 [of the South Carolina Code] contains provisions both granting and delimiting the exercise of corporate functions of municipalities outside their corporate limits." *City of Newberry v. Pub. Serv. Comm'n of S.C.*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986). Section 5-7-60 provides:

Any municipality may perform any of its functions, furnish any of its services, . . . and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United

⁷ We disagree with LCPW's assertion that Fountain Inn failed to appeal the circuit court's ruling that providing service in an area was enough to establish a designated service area and thus that ruling is the law of the case. Fountain Inn's appeal encompasses this ruling. Therefore, this ruling is not the law of the case and does not bar the appeal.

States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission . . . or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section[,] designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *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 (2004).⁸

"Section 5-7-60 provides in part that any municipality may provide its services outside its corporate limits by contract, and the statute defines a designated 'service area' to mean the area in which a particular service is being provided." *Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (Ct. App. 2003); *see also City of Darlington v. Kilgo*, 302 S.C. 40, 43, 393 S.E.2d 376, 378 (1990) (finding when a city had provided limited fire protection to an area outside its boundaries pursuant to a contract, the city had established a service area and thus the area could not be included in the county fire district plan without prior agreement with the city).

In defining designated service area, the statute uses the term "area" without providing a definition of it. *See* § 5-7-60. "Whe[n] a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply

⁸ Many South Carolina cases discussing home rule involve electric services, thus implicating the Public Service Commission, which is not involved in natural gas service. *See, e.g., City of Rock Hill v. Pub. Serv. Comm'n of S.C.*, 308 S.C. 175, 177-79, 417 S.E.2d 562, 563-64 (1992); *Blue Ridge Elec. Co-op, Inc. v. City of Seneca*, 297 S.C. 283, 286-90, 376 S.E.2d 514, 516-18 (1989); *City of Newberry*, 287 S.C. at 406-07, 339 S.E.2d at 125-26.

its meaning." *Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009) (quoting *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002)); see also *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 144, 750 S.E.2d 65, 71 (2013) (relying on *Black's Law Dictionary* and *Merriam-Webster's Collegiate Dictionary* to provide the meaning of a word not defined in the statute); *S.C. Pub. Interest Found. v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017) (finding when a word is not defined by statute, "the court must look to the usual and customary meaning . . . to ascertain the legislature's intent"), cert. denied, S.C. Sup. Ct. Order dated Feb. 1, 2018. *Black's Law Dictionary* has defined area as "[a] surface, a territory, a region." *Area*, *Black's Law Dictionary* (6th ed. 1990). *Webster's New World College Dictionary* defines area as "a part of the earth's surface; region; tract." *Area*, *Webster's New World College Dictionary* (4th ed. 2008).

Our supreme court determined in *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 72, 321 S.E.2d 258, 261 (1984), the sewer district had established a designated service area when it had "constructed sanitary sewer collection lines, transmission lines and treatment facilities to handle the waste water generated by the users of the sewerage system located within the district."

"Questions of statutory interpretation are questions of law, which this [c]ourt is free to decide without any deference to the tribunal below." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Centex Int'l, Inc.*, 406 S.C. at 139, 750 S.E.2d at 69 (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). "[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

"[W]ords in a statute must be construed in context," and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). "The language must also be read

in a sense which harmonizes with its subject matter and accords with its general purpose." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Eagle Container Co. v. Cty. of Newberry, 379 S.C. 564, 570-71, 666 S.E.2d 892, 895-96 (2008) (alteration by court). "[T]he statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

In the present case, the circuit court did not err in its determination that Fountain Inn could not operate in LCPW's designated service area. Because the statute is unambiguous, we must follow its plain language. See *Grier*, 397 S.C. at 535-36, 725 S.E.2d at 695 ("[W]e must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" (quoting *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581)). We agree with the circuit court the phrase in section 5-7-60 "as certified by the governing body" only applies to the portion of the sentence stating "funds have been applied for" and not the prior part of the sentence stating "an area in which the particular service is being provided." The record contains evidence the two parties generally observed the boundary provided by the Map. Because LCPW has been providing natural gas in the area, it has established a designated service area. Accordingly, the circuit court did not err in finding LCPW had a designated service area in which Fountain Inn could not offer its services without LCPW's permission.⁹

CONCLUSION

⁹ Fountain Inn also contends the circuit court erred in ruling the Map created a boundary line because the parties could not have entered into such an agreement, much less entered into it in such a way as to bind future councils and customers who are not residents of either Fountain Inn or the City of Laurens. As we affirm because the designated service area was created by the two parties observing the limits over a period of many years, not by the Map creating a binding contract, we do not need to reach this issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review the remaining issues when its determination of a prior issue is dispositive of the appeal).

The circuit court's decision LCPW has a designated service area and Fountain Inn cannot provide gas service within that designated service area without LCPW's permission is

AFFIRMED.

SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2011-CP-30-309

RECEIVED
MAY 30 2018
SC Court of Appeals

Commissioners of Public Works of the City of
Laurens, South Carolina, also Known as the Laurens
Commission of Public Works, ...Respondent,

v.

City of Fountain Inn, South Carolina, ...Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant City of Fountain Inn, South Carolina ("City") petitions the Court for a rehearing of the opinion filed in this case on May 16, 2018. In its opinion, this Court affirmed the trial court's ruling relating to the parties' dispute over whether the Laurens Commission of Public Works ("LCPW") may properly exclude the City from providing natural gas service in an unincorporated area of Laurens County pursuant to S.C. Code Ann. § 5-7-60. The City respectfully submits that the Court overlooked or misapprehended the following points:¹

¹ The City incorporates its Appellant's Brief and Reply Brief by reference herein. The City believes each of its arguments should have been addressed and analyzed by this Court.

I. The Facts.

The Court's opinion fails to acknowledge that the area that became the Owings Industrial Park was undeveloped at the time ZF Transmissions was seeking a natural gas supplier. This fact is key to the appropriate analysis of whether LCPW had established a designated service area that included the area in question.

II. The Standard of Review.

As an initial matter, the Court appears to have conflated a question of law (such as construction of a statute) with an action at law for purposes of the standard of review. This ruling fails to acknowledge that questions at law can arise in otherwise equitable actions such as this one. See Jean H. Toal *et al.*, *Appellate Practice in South Carolina* 226, 230 (3d ed. 2016). In such a case, the court reviews the questions of law *de novo*, but reviews the factual findings according to the Court's view of the preponderance of the evidence. See *Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) ("A legal question in an equity case receives review as in law.").

As previously argued, this was a declaratory judgment action seeking equitable relief in the form of an injunction. The City would agree that the construction of a statute is a question of law, but that does not convert the nature of this action from a case in equity to a case at law. To the extent this case raised factual issues (and the City believes it did with respect to whether service was actually being provided in the contested area), this Court remained free to take its own view of the preponderance of the evidence and was not constrained to accept the trial court's findings. Once the Court determined what constituted a "designated service area" for purposes of § 5-7-60, it could then apply the facts of this case according to its own view of the

preponderance of the evidence to that definition to determine whether LCPW established a designated service area.

For this reason, the Court should grant rehearing to consider the facts of this case in light of the proper standard of review.

III. The Court erred in finding that there was a designated service area for purposes of § 5-7-60 under the facts of this case.

South Carolina appellate courts have not previously addressed a case where two municipalities seek to serve the same unincorporated area. Under the Court's opinion here, LCPW can and will claim it has a territory over all of unincorporated Laurens County because it has infrastructure in place that can serve it. The City still does not have a clear idea of where it can and cannot pursue business under the reasoning of the Opinion.

This is not what § 5-7-60 was designed to do. Instead, § 5-7-60 was designed to allow cities to serve outside their borders unless such service would oust another governmental provider. That is the consistent theme of all of the previous cases under this statute. *See e.g., Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984). The Court fails to acknowledge these general principles and further fails to address the City's arguments that service by contract outside the city limits is the rule under § 5-7-60 and designated service areas are the exception. In addition, the Court failed to acknowledge the policy arguments raised by the City in support of its construction of § 5-7-60 relating to Home Rule, the duties of municipalities with respect to residents versus non-residents, and the benefits of competition.

No one was serving the area in question at the time this industrial park was announced. It was undeveloped. (*See R.* at 286:11-13; 315:12-18; 331:12-16; 371). The only way LCPW could claim to be serving there and thus, that the area was its designated service area, is by

reference to the void boundary line to which the parties could not have agreed. If the line is void, no one had a designated service area with respect to the undeveloped property at issue.

Footnote 9 of the opinion again gives effect to the line shown on the 1992 Map, while at the same time declining to reach the issue of whether the parties could have made such agreement. If the parties could not reach such an agreement, how can the line give rise to an enforceable boundary? Certainly, LCPW may continue to serve the customers with whom it has contracts, but any other area should not be considered a designated service area. Such a ruling is directly contrary to the spirit of *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178-82, 480 S.E.2d 728, 731-32 (1997) and the idea that one council may not bind future councils. Thus, the Court erred in failing to treat the City's argument on this point.

IV. The Court's opinion references rulings the trial court did not make.

The trial court did not rule that "the phrase in section 5-7-60 'as certified by the governing body' only applies to the portion of the sentence stating 'funds have been applied for' and not to the prior part of the sentence stating 'an area in which the particular service is being provided.'" (Opinion at 9). The application of this sentence was raised in the City's Motion to Amend and was not addressed in the trial court's order denying the motion. (R. at 229-31, 17). The City again argued this sentence of the statute and that Laurens County is the appropriate certifying body in its appeal.

As the City has argued previously and raises again here, the better construction, and the only one that is consistent with Home Rule, is that any certification must be made by the governing body for the area. Otherwise, cities could proclaim designated service areas by fiat whether or not they were actually serving any customers in the particular area in question, as was the case here. Counsel for LCPW acknowledged the possible extremes to which a designated

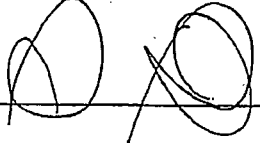
service area might be carried under its construction when he mused at trial “does this mean it goes on forever, does this mean we can go all the way to Charleston.” (R. at 345:5-7). This would leave customers with no recourse as a matter of contract or at the ballot box.

Moreover, even if this Court agrees with LCPW that no certification is required in cases where service is already being provided, there is no evidence that LCPW was actually providing service to customers in the disputed area. Instead, LCPW presented evidence that it generally served the entire area on its side of the line as shown in the 1992 Map. As discussed above, the line is a nullity and cannot serve as the basis for an argument that service was being provided in the disputed area in the absence of evidence of actual customer contracts. Therefore, LCPW has not established a designated service area with respect to the area in question.

CONCLUSION

For these reasons and those contained in its briefs, the City urges the Court to grant rehearing in this matter and reverse the trial court’s determination that LCPW has created a designated service area with respect to any and all properties located on its side of the line, regardless of whether it has actually provided service to customers in a particular area.

Respectfully submitted,



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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381

Attorneys for Appellant
City of Fountain Inn, South Carolina

May 30, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2011-CP-30-309

RECEIVED

MAY 30 2018

SC Court of Appeals

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the Laurens
Commission of Public Works, ...Respondent.

v.

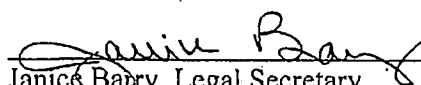
City of Fountain Inn, South Carolina, ...Appellant,

PROOF OF SERVICE

I certify that I have served the *Appellant's Petition for Rehearing* on Respondent on May
30, 2018, by mailing a copy of the same via United States Mail, postage prepaid, to the
following:

Bernie W. Ellis
McNair Law Firm, P.A.
P.O. Box 447
Greenville, SC 29602

Robert L. Widener
McNair Law Firm, P.A.
Suite 1800, 1221 Main Street
P.O. Box 11390
Columbia, SC 29211


Janice Barry, Legal Secretary
Haynsworth Sinkler Boyd, P.A.

The South Carolina Court of Appeals

Commissioners of Public Works of the City of Laurens,
South Carolina, also known as the Laurens Commission
of Public Works, Respondent,

v.

City of Fountain Inn, South Carolina, Appellant.

Appellate Case No. 2015-001894

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Sports, Jr. J.

A. K. J.

John D. Beathem J.

Columbia, South Carolina

cc:

Sarah Patrick Spruill, Esquire
Boyd Benjamin Nicholson, Jr., Esquire
Robert L. Widener, Esquire

FILED

June 01, 2018

Bernie W. Ellis, Esquire
David W. Holmes, Esquire
The Honorable J. Cordell Maddox, Jr.

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 6/25/18
C/M # 29772.0031
Routing BBN, SP5, JMD, PRC
Calendared _____

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

MAR 21 2016

SC Court of Appeals

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2011-CP-30-309

Commissioners of Public Works of City of
Laurens, South Carolina, also Known as the Laurens
Commission of Public Works, ...Respondent,

v.

City of Fountain Inn, South Carolina, ...Appellant.

BRIEF OF APPELLANT

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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381
Attorneys for Appellant
City of Fountain Inn, South Carolina

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
FACTS	3
STANDARD OF REVIEW	5
ARGUMENTS.....	5
I. THE PARTIES' ABILITY TO SERVE OUTSIDE THEIR OWN MUNICIPAL LIMITS IS LIMITED.	5
A. LCPW has not established a designated service area.	7
B. The cases cited by the trial court do not support a ruling that LCPW has established a designated service area for purposes of S.C. Code Ann. § 5-7-60.....	10
II. THE TRIAL COURT ERRED IN RULING THAT THE 1992 MAP CREATED A BOUNDARY LINE BECAUSE THE PARTIES COULD NOT HAVE ENTERED SUCH AN AGREEMENT, MUCH LESS ENTERED IT IN A WAY THAT WOULD BIND FUTURE COUNCILS AND CUSTOMERS WHO ARE NOT RESIDENTS OF EITHER FOUNTAIN INN OR THE CITY OF LAURENS.	13
CONCLUSION.....	15

TABLE OF AUTHORITIES

CASES

<i>Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.</i> , 325 S.C. 174, 480 S.E.2d 728, (1997)	14
<i>Boyce v. Lancaster Cnty. Natural Gas Auth.</i> , 266 S.C. 398, 223 S.E.2d 769 (1976), <i>overruled on other grounds by McCall by</i> <i>Andrews v. Batson</i> , 285 S.C. 243, 329 S.E.2d 741 (1985)	14
<i>Calcaterra v. City of Columbia</i> , 315 S.C. 196, 432 S.E.2d 498 (Ct. App. 1993).....	7, 10
<i>Carolina Power & Light Co. v. Darlington Cnty.</i> , 315 S.C. 5, 431 S.E.2d 580 (1993)	10, 12
<i>Childs v. City of Columbia</i> , 87 S.C. 566, 70 S.E. 296 (1911)	6, 7
<i>City of Darlington v. Kilgo</i> , 302 S.C. 40, 393 S.E.2d 376 (1990)	10, 11
<i>City of Spartanburg v. Cnty. of Spartanburg</i> , 303 S.C. 393, 401 S.E.2d 158 (1991)	12
<i>Cunningham v. Anderson Cnty.</i> , 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), <i>aff'd in part and rev'd in part on other</i> <i>grounds by</i> 414 S.C. 298, 778 S.E.2d 884 (2015)	14
<i>Doe v. S. Carolina Med. Malpractice Liab. Joint Underwriting Ass'n</i> , 347 S.C. 642, 557 S.E.2d 670 (2001)	5
<i>Glendale Water Corp. of Florence v. City of Florence</i> , 274 S.C. 472, 265 S.E.2d 41 (1980)	7
<i>Gordon v. Colonial Ins. Co.</i> , 342 S.C. 152, 536 S.E.2d 376 (Ct. App. 2000).....	5
<i>Knight v. Salisbury</i> , 262 S.C. 565, 206 S.E.2d 875 (1974)	8
<i>Newman v. McCullough</i> , 212 S.C. 17, 46 S.E.2d 252 (1948)	14
<i>Sloan v. City of Conway</i> , 347 S.C. 324, 555 S.E.2d 684 (2001)	7, 9
<i>Spartanburg Sanitary Sewer Dist. v. City of Spartanburg</i> , 283 S.C. 67, 321 S.E.2d 258 (1984)	11
<i>Stevens & Wilkinson of S.C., Inc. v. City of Columbia</i> , 409 S.C. 568, 762 S.E.2d 696 (2014)	13
<i>Townes Assocs. Ltd. v. Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976)	5
<i>Wagener v. Smith</i> , 221 S.C. 438, 71 S.E.2d 1 (1952)	9
<i>Wiedemann v. Town of Hilton Head Island</i> , 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001).....	5

STATUTES

Act No. 283, 1974 S.C. Acts 724.....	6
S.C. Code Ann. § 5-7-30.....	5
S.C. Code § 4-19-10.....	12
S.C. Code Ann. § 5-7-60.....	passim
S.C. Const. art. VIII, § 7	8

OTHER AUTHORITIES

12 McQuillin Mun. Corp. § 34:108 (3d ed.).....	7
Pierce T. MacLennan, Comment, A Long Way from Home: Slow Progress Toward “Home Rule” in South Carolina and a Path to Full Implementation, 64 S.C. L. Rev. 781 (2013).....	8

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in finding that the Laurens Commission of Public Works ("LCPW"), a municipal provider of natural gas, could exclude the City of Fountain Inn ("Fountain Inn") from providing natural gas service to customers located outside the boundaries of either city pursuant to S.C. Code Ann. § 5-7-60?

STATEMENT OF THE CASE

LCPW brought this action on March 30, 2011 seeking a determination as to whether it had established a designated service area under S.C. Code Ann. § 5-7-60 for the provision of natural gas services in an area located outside the boundaries of Fountain Inn or Laurens. (R. at 18-27). It further sought an injunction barring Fountain Inn from providing natural gas service within that area without the permission of LCPW.¹ Fountain Inn answered and denied that LCPW had established or could establish a designated service area in the manner set forth in the Complaint and that any agreement purporting to do so was not adopted by resolution by the applicable governing bodies, was *ultra vires* and unenforceable, was unsupported by consideration, did not reflect a meeting of the minds, was illegal, and was barred by the doctrine of unclean hands. (R. at 28-36).

The parties filed cross-motions for summary judgment. (R. at 37-38; 39-44). LCPW argued that it had established a dedicated service area pursuant to § 5-7-60 and that it could exclude Fountain Inn from providing natural gas services within that area. (R. at 39-44). Fountain Inn, on the other hand, argued that LCPW could not establish its claimed designated service area, either as a matter of law or as a matter of contract. (R. at 37-38; 45-136). After a hearing on April 24, 2013, both motions were denied. (R. at 6).

This matter was tried before the Hon. J. Cordell Maddox, Jr. on March 20, 2014. Prior to trial, each party submitted a pre-trial brief addressing its legal arguments. (R. at 137-146; 147-159). At the close of the evidence, the trial court provided the parties the

¹ The Complaint alleges causes of action for breach of contract and promissory estoppel; those claims, however, were withdrawn at trial. (R. at 9, n. 3; 324:14-329:19).

opportunity to submit post-trial briefings. (R. at 341:5-346:13; 173-235). After receiving these materials, the trial court issued an order dated September 24, 2014 (“Order”). (R. at 7-16). In the Order, the trial court declared that “LCPW has complied with the requirements to establish a territory on the southern and eastern side of the boundary line on the 1992 map as the LCPW’s designated service area for a particular service, natural gas, under S.C. Code Ann. § 5-7-60.” (R. at 15). The trial court further declared that Fountain Inn “may not provide natural gas service in that area without the consent of LCPW.” (*Id.*).

After receiving the Order on September 29, 2014, Fountain Inn served a timely motion to alter or amend on October 8, 2014. (R. at 229-231). The motion incorporated the Fountain Inn’s arguments at trial and its briefings to the trial court. The motion challenged the structure of the Order, including the absence of findings of fact and conclusions of law, and raised several arguments with respect to the specific language in the Order. (*Id.*) The trial court denied the motion without a hearing by order dated August 13, 2015. (R. at 17). Fountain Inn received written notice of the entry of this order on August 21, 2015 and timely served a notice of appeal on September 2, 2015.

FACTS

LCPW is the entity established by the City of Laurens to provide combined utility services, including water, sewer, electricity, and natural gas. (R. at 7; 290:4-6). It is dependent on the City of Laurens for bond funding. (R. at 290:21-23). It is not a creature of Laurens County, nor is it a public service district. Fountain Inn also provides natural gas services. Both LCPW and Fountain Inn purchase natural gas from the Transco pipeline located within Fountain Inn. (R. at 265:14-266:14; 316:21-317:5; 326:22-25).

Both parties provided service along the I-385 corridor for years. (*See* R. at 254:10-255:6). Over the years and as admitted by counsel for LCPW at trial, the gas managers for the respective parties discussed establishing a boundary between them; however, no such agreement was ever formalized. (R. at 8; 241:20-25). In 1992, as part of these discussions, the gas manager for LCPW attempted to draw a line on a map which purported to be the “boundary line” (the “1992 Map”). (R. at 349-351). After that time, the testimony was only that the parties generally attempted to respect the line.² (R. at 258:2-5; 259:23-260:2). The testimony further reflects that there were exceptions to which entity provided service on which side of the line and that there were disagreements about where the alleged boundary line ran. (R. at 263:25-264:9; 322:6-13; 331:20-332:16; 371). As noted by the trial court, there was overlap along the alleged boundary line. (R. at 8).

In 2011, the Laurens County Development Corporation (“LCDC”) announced plans for a new industrial park located about three miles from Fountain Inn (fifteen miles from the City of Laurens). (R. at 329:2-6). The proposed industrial park is situated on the LCPW side of the alleged boundary line. This area of northern Laurens County was largely undeveloped. (R. at 315:12-18; 331:12-16). There was no testimony that either party had contracts with customers inside the area of the proposed industrial park at the time of the announcement. (*See* R. at 286:11-13). Moreover, Fountain Inn was asked to submit a bid to provide natural gas service by the developer of one of the projects within the proposed industrial park. (R. at 329:22-330:5). As such, Fountain Inn felt it was free

² As testified by a former LCPW general manager, “it’s a difficult line to follow, but we try to, yes, sir.” (R. at 283:10-20).

to compete for this new business. (R. at 331:1-16). LCPW brought this action to prevent that competition.

Both LCPW and Fountain Inn built new service lines to serve the new industrial park. (R. at 338:25-339:8). At the time of trial, both Fountain Inn and LCPW had a contract to serve and were serving a customer in the new industrial park. (R. at 284:25-285:18; 357-361).

STANDARD OF REVIEW

On appeal from a declaratory judgment action, the Court looks to the basis of the claim for declaratory relief to determine whether the case is legal or equitable in nature. *Gordon v. Colonial Ins. Co.*, 342 S.C. 152, 155, 536 S.E.2d 376, 378 (Ct. App. 2000). Here, the root of the underlying claim is for statutory construction and an injunction. As such, the case should be reviewed under the standard of review applicable in equity. *Doe v. S. Carolina Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001). Therefore, this Court may rule according to its own view of the law and of the preponderance of the evidence. *Townes Assocs. Ltd. v. Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976); *Wiedemann v. Town of Hilton Head Island*, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001) (“Actions for injunctive relief are equitable in nature. In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of a preponderance of the evidence.”).

ARGUMENTS

I. The parties’ ability to serve outside their own municipal limits is limited.

As a general rule, the powers of a municipality are limited to the area within its municipal limits. See S.C. Code Ann. § 5-7-30 (“Each municipality . . . may enact

regulations, resolutions, and ordinances, . . . *including the exercise of powers* in relation to roads, streets, markets, law enforcement, health, and order *in the municipality* or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience *of the municipality* or for preserving health, peace, order, and good government *in it*”). As set forth in *Childs v. City of Columbia*, 87 S.C. 566, 570, 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.

LCPW argues that it has a “designated service area” and the right to exclude Fountain Inn from that area by operation of S.C. Code Ann. § 5-7-60, which was enacted as part of Home Rule (Act No. 283, 1974 S.C. Acts 724). This statute reads, in pertinent part, as follows:

Any municipality may perform any of its functions, furnish any of its services . . . and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *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.

Pursuant to this section, a municipality may provide services outside its city limits by contract unless the customer is located within the designated service area of another municipality or political subdivision.

A city is not required to serve customers outside its limits. 12 McQuillin Mun. Corp. § 34:108 (3d ed.), *citing Childs, supra*. When it undertakes to do so by contract, a city is not required to charge reasonable rates but rather “is to be guided by the best interests of the municipality and has an obligation to sell [its service] for the highest price obtainable.” *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993). Any duties to customers located outside the municipal limits “arise only by contract.” *Sloan v. City of Conway*, 347 S.C. 324, 330-31, 555 S.E.2d 684, 687 (2001).

A. LCPW has not established a designated service area.

This case involves the ability of Fountain Inn and LCPW to contract with customers located outside their respective boundaries. Neither party has governing authority in this unincorporated area of Laurens County.

LCPW has taken the position that it has a designated service area that expands to cover most of Laurens County, and as such, it can exclude any other municipal natural gas providers from that area.³ Fountain Inn disagrees and contends both parties have the ability to contract with customers to provide natural gas in the disputed area.

As set forth in § 5-7-60, a designated service area is “an area in which the particular service is being provided or is budgeted or funds have been applied for *as certified by the governing body thereof*.” (Emphasis added): This language makes it

³ As acknowledged by the trial court, municipal providers can and do compete with private natural gas companies. (R. at 14, *citing Glendale Water Corp. of Florence v. City of Florence*, 274 S.C. 472, 474, 265 S.E.2d 41, 42 (1980)). Fountain Inn competes with Piedmont Natural Gas, and in those cases, the customer has a choice of providers. (R. at 334:17-25).

clear that the applicable governing body is that which has governing authority over the area in question. Here, that would be Laurens County. Therefore, to trigger the designated service area portion of the statute, Laurens County would need to certify that natural gas service is already being provided in the area or that funds have been budgeted or applied for.

In this scenario, Laurens County Council would be politically accountable with respect to the service provided and any rates charged. This is consistent with the general principles of Home Rule. S.C. Const. art. VIII, § 7 (“The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties.”); *Knight v. Salisbury*, 262 S.C. 565, 569, 206 S.E.2d 875, 876 (1974) (“Article VIII reflects a serious effort upon the part of the electorate and the General Assembly to restore local government to the county level.”); *see generally* Pierce T. MacLennan, Comment, A Long Way from Home: Slow Progress Toward “Home Rule” in South Carolina and a Path to Full Implementation, 64 S.C. L. Rev. 781 (2013) (discussing Home Rule’s intent to give counties greater power in local government matters).

LCPW, on the other hand, is not politically accountable to customers outside the City of Laurens, and is not even required to charge a reasonable rate for its services, but rather is guided by its obligations to maximize its rates for the benefit of the residents of the City of Laurens. Given this background, it is nonsensical that LCPW could proclaim a monopoly over most of Laurens County, an area for which it is not politically accountable and over which there is no limit to what it can charge customers. This leaves customers without a choice, either practically or politically. This cannot have been the

intent of the General Assembly. Accordingly, the trial court erred in determining that the City of Laurens or the LCPW, and not Laurens County, was the appropriate governing entity to certify as to the disputed area.

In addition, the evidence showed that LCPW has not budgeted funds specifically for the purpose of providing service in the area where the new industrial park is located. Instead, it has budgeted funds to maintain a safe and consistent supply of gas to the City of Laurens and all LCPW customers. (R. at 265:14-266:14). Coincidentally, those transmission lines cross northern Laurens County on their way to the Transco pipeline located within Fountain Inn. (*Id.*). Under LCPW's logic, it has also budgeted funds to provide natural gas service within Fountain Inn by virtue of having its transmission line there. Quite simply, LCPW has expended funds to get natural gas from the pipeline located in Fountain Inn to the City of Laurens, which required running lines through northern Laurens County. This does not mean all of the area located between Fountain Inn and the City of Laurens is LCPW's designated service area.

This is not a case where two competing bodies are attempting to govern the same area.⁴ Rather, it is a case where two municipal entities seek to contract to provide natural gas service to customers located outside their respective boundaries. As set forth above, a municipality can only extend its services outside its boundaries via contracts.

A review of the cases construing § 5-7-60 emphasizes the contractual nature of service outside municipal limits. See *Sloan v. City of Conway*, 347 S.C. 324, 328, 555 S.E.2d 684, 686 (2001) ("South Carolina Code Ann. § 5-7-60 (1976), which was enacted as part of the Home Rule Amendment, provides generally that a municipality may

⁴ Therefore, cases like *Wagener v. Smith*, 221 S.C. 438, 71 S.E.2d 1 (1952), which treat the issue of two parties seeking to govern the same area are inapplicable.

contract to furnish and charge for any of its services outside its corporate limits.”); *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993) (“South Carolina Code Ann. § 5-7-60 (1976) provides: Any municipality may perform any of its functions, furnish any of its services ... and make charges therefor ... in areas outside the corporate limits of such municipality by contract with any individual....”); *Carolina Power & Light Co. v. Darlington Cnty.*, 315 S.C. 5, 8, 431 S.E.2d 580, 582 (1993) (quoting *City of Darlington v. Kilgo*, 302 S.C. 40, 43, 393 S.E.2d 376, 378 (1990) and finding that “[the] legislative intent [of §§ 4-19-10 and 5-7-60] was to allow municipalities to continue to offer fire protection service in areas previously served under *contract*, and that such areas could not be included in any county district plan without prior agreement with the municipality.”). Here, Fountain Inn’s argument comports with this basic rule. Both LCPW and Fountain Inn should be free to contract in this area as it does not fall within a designated service area. This competition would protect customers from being charged unreasonable rates by a monopolist that is not politically accountable to those customers.

B. The cases cited by the trial court do not support a ruling that LCPW has established a designated service area for purposes of S.C. Code Ann. § 5-7-60.

The trial court relied on two cases in its discussion of designated service areas, each of which is distinguishable from the instant case.⁵ These cases, when read as a whole, support Fountain Inn’s arguments.

⁵ The trial court also cited *Mathis v. Hair*, 358 S.C. 48, 594 S.E.2d 851 (Ct. App. 2002). *Mathis*, however, does not arise under § 5-7-60, and the trial court failed to provide the full context for the citation, which is as follows:

Section 5-7-60 provides in part that any municipality may provide its services outside its corporate limits by contract, and the statute defines a

The first, *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984), involved a city that sought to expand its services outside its city limits and within the Spartanburg Sanitary Sewer District (“Sewer District”), a governmental entity created by the General Assembly for the defined purpose of providing sewer service within its defined boundaries (Act No. 1503, 1970 S.C. Acts 3336). The Sewer District, as the governing body for the provision of sewer services within its boundaries, provided evidence that it had constructed lines to handle all the wastewater needs within the Sewer District’s boundaries. *Id.* at 71-72, 321 S.E.2d at 261-62. The Supreme Court found this met the “designated service area” definition provided in S.C. Code Ann. § 5-7-60. *Id.* at 72, 321 S.E.2d at 261. LCPW could make similar arguments if Fountain Inn sought to provide services within the City of Laurens; however, in this case, LCPW is not the governing body with respect to the area in question. Therefore, it has not established a designated service area.

The trial court also cited *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990). In that case, two cities, Hartsville and Darlington, were each providing fire protection services by contract within a five mile radius of their respective city limits. *Id.* at 42, 393 S.E.2d at 377. Darlington County sought to include these areas in a new county-wide fire protection district (“District”), which was to include all unincorporated areas of the county. *Id.* Balancing both a fire protection statute and § 5-7-60, the

designated “service area” to mean the area in which a particular service is being provided. S.C. Code § 5-7-60 (1977); *see also City of Darlington v. Kilgo*, 302 S.C. 40, 43, 393 S.E.2d 376, 378 (1990) (area outside cities’ boundaries that cities provided limited fire protection to pursuant to contract was a “service area” of the cities and thus could not be included in the county fire district plan without prior agreement with Fountain Inn).

Id. at 53, 394 S.E.2d at 854. Thus, *Mathis* is consistent with Fountain Inn’s arguments relating to § 5-7-60 and *City of Darlington*.

Supreme Court upheld the cities' contracts within the disputed area, holding "[i]t is our view that S.C. Code § 4-19-10(b) protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in the absence of an agreement, newly created county fire districts must exclude areas served by cities under contract." *Id.* at 43, 393 S.E.2d at 378.

The Supreme Court later clarified the significance of contracts in the companion case of *Carolina Power & Light v. Darlington Cnty.*, 315 S.C. 5, 431 S.E.2d 580 (1993). In that case, a customer located within the District sought to be excluded from the District and any tax obligations it imposed. *Id.* at 7-8, 431 S.E.2d at 581. As framed by the Supreme Court, the only question was "whether CP & L had a valid contract for fire protection service which would prevent the inclusion of CP & L in the new Darlington Fire Protection District under S.C. Code Ann. §§ 4-19-10 and 5-7-60 (1976)." *Id.* at 8, 431 S.E.2d at 582. In answering that question, the Court stated, "the statutes as interpreted in *Kilgo, supra*, clearly require a valid contract with Fountain Inn to avoid inclusion in the [District]." *Id.* "By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established." *Id.* at 9, 431 S.E.2d at 582. Similarly, in *City of Spartanburg v. Cnty. of Spartanburg*, 303 S.C. 393, 394-95, 401 S.E.2d 158, 159 (1991), the Supreme Court distinguished *City of Darlington* and found that a city could not challenge the creation of a special taxing district to provide fire protection services outside the city's limits with respect to a former city customer with which the city no longer had an existing agreement.

Thus, the inquiry in these cases focuses on customer contracts and protection of existing customer rights. The evidence in this case shows that neither party had existing contracts within the proposed industrial park; thus, either party should be free to pursue those customers pursuant to § 5-7-60.

Municipalities do not have the power to divide territory outside their corporate boundaries. They may enter contracts as allowed by § 5-7-60 and other statutes, but otherwise, the powers of a municipality are limited to the area within its limits. The trial court erred in ruling otherwise.

- II. The trial court erred in ruling that the 1992 Map created a boundary line because the parties could not have entered such an agreement, much less entered it in a way that would bind future councils and customers who are not residents of either Fountain Inn or the City of Laurens.**

The trial court, in ruling that there is a boundary line as shown on the 1992 Map, effectively ruled that the parties made a binding agreement as to the disputed area. This ruling is in error because the trial court, in essence, upheld an agreement that the parties did not and could not make.

There was no agreement between Fountain Inn and LCPW setting a boundary. At best there was an agreement to agree, which does create a binding contract. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). Fountain Inn never formalized the agreement, and LCPW did not attempt to do so until the day this action was filed. (R. at 294:1-6).

Even if such an agreement had been executed, 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*

Cnty., 402 S.C. 434, 441-50, 741 S.E.2d 545, 550-54 (Ct. App. 2013), *aff'd in part and rev'd in part on other grounds by* 414 S.C. 298, n.1, 778 S.E.2d 884, n.1 (2015) (dismissing writ of certiorari on this issue); *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178-82, 480 S.E.2d 728, 731-32 (1997); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 131-36, 459 S.E.2d 876, 880-83 (Ct. App. 1995) (“*Cowart I*”), *aff'd* 324 S.C. 239, 241-42, 478 S.E.2d 836, 837-38 (1996) (“*Cowart II*”); *Newman v. McCullough*, 212 S.C. 17, 25-26, 46 S.E.2d 252, 256 (1948). With respect to the service at issue here, the power to buy and sell natural gas is a public and governmental function, and as such would fall under this general rule. See *Boyce v. Lancaster Cnty. Natural Gas Auth.*, 266 S.C. 398, 401, 223 S.E.2d 769, 770 (1976), *overruled on other grounds by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Therefore, the parties could not have entered a valid agreement creating a boundary line.

The Supreme Court has noted an 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*, applies “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 this case, however, there is no statute that would

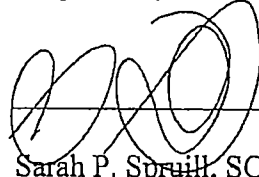
authorize Fountain Inn and LCPW to enter a long-term agreement regarding service areas for natural gas in unincorporated areas.

As such, the trial court has entered an order granting effect to an agreement the parties could not have made under established South Carolina law. Therefore, the trial court's order must be reversed to the extent it purports to adopt the "boundary line" shown on the 1992 Map.

CONCLUSION

For all of the above reasons, the trial court erred in finding that LCPW established a designated service area with a boundary line as shown on the 1992 Map. Therefore, this Court should reverse those rulings.

Respectfully submitted,



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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381

Attorneys for Appellant
City of Fountain Inn, South Carolina

March 18, 2016
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
In the Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-001894
Lower Court Case No. 2011-CP-30-309

Commissioners of Public Works of the City of Laurens, South Carolina,
also known as the Laurens Commission of Public Works

City of Fountain Inn, South Carolina

CHALLENGED RESPONDENT

Robert L. Widener
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Bernis W. Ellis
McNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues	1
Statement of the Case.....	2
Summary of Argument	4
Standard of Review.....	5
Statement of Facts.....	9
Argument	12
I. The undisputed evidence establishes as a matter of law that LCPW has a “designated service area” under § 5-7-60.....	12
II. The trial court did not find a binding territorial agreement that gave LCPW a “designated service area” under § 5-7-60	14
III. Fountain Inn’s “county certification” argument is barred by the law of the case doctrine and has no merit	16
A. Fountain Inn does not challenge the trial court’s ruling that no “certification” is needed to create a “designated service area” when a municipality has actually provided service in the area, thereby making it the law of this case and, in any event, § 5-7-60 clearly does not require certification for a “designated service area” established by the municipality actually providing service	16
B. Fountain Inn’s “county certification” argument has no merit	18
C. Fountain Inn’s “public policy” and “wisdom” arguments are matters that reside in the sole province of the General Assembly.....	21
D. Fountain Inn’s remaining assertions about whether LCPW acquired a “designated service area” have no merit	22
IV. A “designated service area” under § 5-7-60 is not limited to existing customers and existing contracts	23
Conclusion	34
Certificate of Counsel	35

TABLE OF AUTHORITIES

Cases

<i>Adkins v. Comcar Indus., Inc.</i> , 447 S.E.2d 228 (S.C. App. 1994)	12
<i>Auto Owners Ins. Co. v. Rollison</i> , 663 S.E.2d 484 (S.C. 2008)	6
<i>Avery v. Avery</i> , 634 S.E.2d 668 (S.C. App. 2006)	6
<i>Ballenger v. Bowen</i> , 443 S.E.2d 379 (S.C. 1994)	3
<i>Blackburn v. Daufuskie Is. Fire. Dist.</i> , 677 S.E.2d 606 (S.C. 2009)	20
<i>Boggero v. South Carolina Dept. of Rev.</i> , 777 S.E.2d 842 (S.C. App. 2015)	5
<i>Brown v. Duke</i> , 270 S.E.2d 130 (S.C. 1980)	12
<i>Bundy v. Shirley</i> , 772 S.E.2d 163 (S.C. 2015)	5-6
<i>Carolina Power & Light, Co. v. Darlington County</i> , 431 S.E.2d 580 (S.C. 1993)	28, 29
<i>City of Darlington v. Kilgo</i> , 393 S.E.2d 376 (S.C. 1990)	13, 16, 17, 24, 26-33
<i>City of Spartanburg v. County of Spartanburg</i> , 401 S.E.2d 158 (S.C. 1991)	28, 30-32
<i>Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n</i> , 557 S.E.2d 670 (S.C. 2001)	6
<i>Eldridge v. Eldridge</i> , 728 S.E.2d 24 (S.C. 2010)	17, 19, 25

<i>Estate of Guide v. Spooner</i> , 457 S.E.2d 623 (S.C. App. 1995)	20
<i>Hollman v. Bulldog Trucking Co.</i> , 428 S.E.2d 889 (S.C. App. 1993)	12
<i>Mathis v. Hair</i> , 594 S.E.2d 851 (S.C. App. 2002)	17, 32-33
<i>McClurg v. Deaton</i> , 716 S.E.2d 887 (S.C. 2011)	19, 25
<i>Normandy Corp. v. South Carolina Dep't of Transp.</i> , 688 S.E.2d 136 (S.C. App. 2009)	6
<i>Russo v. Sutton</i> , 422 S.E.2d 750 (S.C. 1992)	12
<i>South Carolina Dep't of Natural Resources v. Town of McClellanville</i> , 550 S.E.2d 299 (S.C. (2001))	12
<i>South Carolina Dep't of Transp. v. M&T Enters. of Mt. Pleasant, LLC</i> , 667 S.E.2d 7 (S.C. App. 2008)	19
<i>South Carolina Farm Bureau Mut. Ins. Co. v. Mumford</i> , 382 S.E.2d 11 (S.C. App. 1989)	12
<i>Spartanburg Sanitary Sewer Dist. v. City of Spartanburg</i> , 321 S.E.2d 258 (S.C. 1984)	13, 16, 17, 25-26, 32
<i>State v. Baucom</i> , 531 S.E.2d 922 (S.C. 2000)	12
<i>State v. Peak</i> , 545 S.E.2d 840 (S.C. App. 2001)	20
<i>State v. Petty</i> , 241 S.E.2d 561 (S.C. 1978)	6
<i>Timmerman v. Timmerman</i> , 502 S.E.2d 920 (S.C. App. 1998)	6
<i>Wallace v. Milliken & Co.</i> , 389 S.E.2d 448 (S.C. App. 1990), <i>aff'd as modified on other grounds</i> , 406 S.E.2d 358 (S.C. 1991)	6

<i>White Oak Manor, Inc. v. Lexington Ins. Co.</i> , 753 S.E.2d 537 (S.C. 2014)	12
<i>Williams v. Government Employees Ins. Co.</i> , 762 S.E.2d 705 (S.C. 2014)	5, 6

Other Authorities

S.C. Const. art. VIII, § 16	20
S.C. Code Ann. § 4-19-10 (Rev. 1986).....	27-28, 30
S.C. Code Ann. § 5-7-60 (Rev. 2004).....	<i>passim</i>
S.C. Code Ann. § 23-9-420 (Rev. 2007).....	33
Rule 209(a), SCACR	3
Rule 222(c), SCACR	3
BLACK’S LAW DICTIONARY (5 th Ed.) (1979).....	19, 24
Merriam-Webster.com	19, 24

STATEMENT OF ISSUES

1. The trial court correctly ruled that once a municipality establishes a "designated service area" for a particular service under § 5-7-60, another municipality cannot provide that service in the "designated service area," and the appellant has not challenged this ruling, thereby making it the law of this case.
2. The trial court correctly found that the respondent had provided natural gas service in the disputed area on an exclusive basis for more than two decades, and the appellant has not challenged this finding, thereby making it the law of this case.
3. The trial court correctly found that providing a particular service in an area, standing alone, is sufficient to establish a "designated service area" for that service under § 5-7-60, and this ruling is the law of the case and an additional sustaining for the appealed order.
4. The trial court correctly found that building infrastructure to provide a particular service in an area, standing alone, is sufficient to establish a "designated service area" for that service under § 5-7-60.
5. The trial court did not find that the 1992 boundary agreement was a binding and enforceable contract, nor did it rely upon any such binding effect in ruling that the respondent had a designated service area under § 5-7-60.
6. The certification envisioned by § 5-7-60 must come from the governing body of the entity that is providing the service in the area or has budgeted to do so or has applied for funds to do so.
7. The trial court correctly found that the respondent had a "designated service area" under § 5-7-60 that included the Owings Industrial Park and correctly held that the appellant could not provide natural gas service in this designated service area.
8. The undisputed evidence established, as a matter of law, that LCPW had a "designated service area" under § 5-7-60 that included the Owings Industrial Park and, therefore, any presumed error by the trial court was harmless error.
9. As an additional sustaining ground, the undisputed evidence established, as a matter of law, that LCPW had a "designated service area" under § 5-7-60 that included the Owings Industrial Park.

STATEMENT OF THE CASE

The Respondent (LCPW) brought this declaratory judgment action against the Appellant (Fountain Inn), seeking a declaration that LCPW had a “designated service area” for natural gas services and that Fountain Inn therefore could not provide gas services in this service area without LCPW’s permission. At issue is the meaning and application of S.C. Code Ann. § 5-7-60 (Rev. 2004), which provides in pertinent part:

Any municipality may . . . furnish any of its services . . . in areas outside the corporate limits of such municipality by contract . . . , except within a designated service area for all such services of another municipality [D]esignated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.

(Emphasis added).¹ If a municipality has a designated service area, another municipality cannot provide service in that area absent permission to do so. § 5-7-60.

Two questions control the merits of this appeal: (1) what are the requirements for a “designated service area,” *i.e.*, what is the meaning of § 5-7-60; and (2) did LCPW meet those requirements? The trial court ruled in favor of LCPW under the following findings:

¹ § 5-7-60 provides in full:

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. 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.

(Shaded areas comprise the quote in the appended text).

1. In 1992, the parties' service managers agreed to a boundary line for their respective natural gas service areas outside their city limits. (R. 8).
2. The parties' governing bodies never ratified this agreement, but the parties voluntarily operated their systems in accordance with the boundary line for the next 20 years. (*Id.* at 8).
3. When a dispute arose about a customer along the boundary line, the parties resolved the issue by agreement. (*Id.* at 8, 13-14).
4. For the next 20 years, until 2011, LCPW provided natural gas services throughout the area on its side of the boundary line; Fountain Inn never sought to provide services in this area; and providing service is enough to establish a designated service area regardless of any alleged certification defect. (*Id.* at 8-9; 11; 13-14).
5. LCPW issued a resolution certifying that it provides natural gas service to the area defined by the boundary line, has budgeted to do so, and has expended funds to do so in accordance with § 5-7-60. (*Id.* at 11).
6. The current dispute arose in 2011 when Fountain Inn, for the first time, solicited a customer in the newly developed Owings Industrial Park, which is in LCPW's service area. (*Id.* at 9; 13-14).

Based on these findings, the trial court held that LCPW had a "designated service area":

Therefore, the territory served by LCPW is a territory "in which the particular service [natural gas] is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." S.C. Code Ann. § 5-7-60. Further, in accordance with the statute, the City of Fountain Inn may not furnish natural gas in the LCPW's designated service area without the consent of the LCPW . . .

(R. 11; see also *id.* at 7, 15). Fountain Inn timely appealed.²

² In its Statement of the Case, Fountain Inn cites summary judgment materials designated for inclusion in the Record on Appeal. (Init. App. Br. at 2; App's. Designation). Summary judgment was denied, so the orders and proceedings are irrelevant to the issues on appeal. *Ballenger v. Bowen*, 443 S.E.2d 379, 379 (S.C. 1994) (denial of summary judgment decides nothing and is not reviewable on appeal, even after final judgment). Thus, these materials are irrelevant and not properly included in the Record. Rule 209(a) and 222(c), SCACR.

SUMMARY OF ARGUMENT

Applying the plain meaning of § 5-7-60 to the undisputed in this case demonstrates as a matter of law that LCPW established a “designated service area” that includes the area in dispute here (Owings Industrial Park). Thus, per § 5-7-60, Fountain Inn cannot provide natural gas service in this area without LCPW’s permission. See Arg. I, *infra*.

Fountain Inn makes three basic arguments on appeal. First, it argues that the trial court erred by enforcing the boundary agreement between the parties to find that LCPW had a “designated service area” under § 5-7-60. This is a straw man argument. The trial court never found the boundary agreement was enforceable, never enforced it, and never relied on it as being an enforceable contract that created a “designated service area.” Rather, the trial court noted the undisputed facts regarding the agreement as context for its factual finding that LCPW had, in fact, provided natural gas services in the disputed area for 20 years, and that Fountain Inn had never attempted to do so before the current dispute. This “fact” of actually providing service in the area is the single most common and relevant fact for establishing a designated service area under § 5-7-60. See Arg. II, *infra*.

Second, Fountain Inn argues that LCPW did not establish a “designated service area” under § 5-6-70, because the statute requires a certification from Laurens County Council, not LCPW, on whether LCPW had provided service in the area, was providing service in the area, or had budgeted funds to do so. This argument fails for several reasons, including the following: (1) it is the law of this case and the statute plainly provides that the certification requirement does not apply when a municipality establishes a designated service area by actually providing service in that area; (2) no governing body has the power or requisite knowledge to *certify* another governing body’s actions, budget, or funding

applications – such certifications can only come from the governing body whose actions, budget, or funding applications are being certified; and (3) accepting Fountain Inn’s argument would lead *inter alia* to the absurd result of the county having unbridled control over the establishment of a “designated service area” under § 5-7-60, and nothing in the statute evidences any such legislative intent. See Argument III, *infra*.

Third, Fountain Inn argues that a “designated service area” under § 5-7-60 is limited to existing customers with existing contracts and does not extend beyond those customers. This argument fails under the plain and ordinary meaning of “area,” as well as the meaning of “service area” as used in § 5-7-60 and several other statutes. It also fails under the plain rulings by the Supreme Court in the cases cited by Fountain Inn on appeal. Moreover, acceptance of Fountain Inn’s argument would frustrate the clear purpose of § 5-7-60, which is to encourage municipalities to make their services available to residents outside the municipality’s corporate limits. See Arg. IV, *infra*.

STANDARD OF REVIEW

The dominant issues in this appeal are the meaning and application of § 5-7-60, which is a mixed question of law and fact. *Boggero v. South Carolina Dept. of Rev.*, 777 S.E.2d 842, 844, 845 (S.C. App. 2015). The meaning of the statute is a question of law and subject to *de novo* review. *Id.* Whether the requirements of the statute have been met is a question of fact. *Id.* Here, the evidence is undisputed, and the application of the law to undisputed facts is a question of law for the court and subject to *de novo* review. *Williams v. Government Employees Ins. Co.*, 762 S.E.2d 705, 709 (S.C. 2014).

To the extent there are disputed issues of facts, this is a declaratory judgment action, and the standard of review therefore depends on the nature of the underlying issue. *Bundy*

v. Shirley, 772 S.E.2d 163, 168 (S.C. 2015). Thus arises the question of whether an action for the interpretation and application of a statute is at law or in equity. If “at law,” appellate review is limited to whether any evidence supports the ruling. *Williams*, 762 S.E.2d at 709. If “in equity,” an appellate court may take its own view of the evidence but generally defers to the trial court’s witness credibility determinations based on its superior position to make such determinations. *Avery v. Avery*, 634 S.E.2d 668, 671 (S.C. App. 2006).

Contrary to Fountain Inn’s assertion, the general rule is that an action involving the interpretation and application of a statute is an action at law and underlying factual issues are reviewed under the “any evidence” standard of review. *Normandy Corp. v. South Carolina Dep’t of Transp.*, 688 S.E.2d 136, 141 (S.C. App. 2009); *Timmerman v. Timmerman*, 502 S.E.2d 920, 921 (S.C. App. 1998); *accord Auto Owners Ins. Co. v. Rollison*, 663 S.E.2d 484, 487 (S.C. 2008) and *State v. Petty*, 241 S.E.2d 561, 562 (S.C. 1978). An equity review of factual issues is undertaken when required by the statute or when the statute includes a remedial scheme that is predominately equitable in nature. *Wallace v. Milliken & Co.*, 389 S.E.2d 448, 449 (S.C. App. 1990), *aff’d as modified on other grounds*, 406 S.E.2d 358, 360-361 (S.C. 1991).³

Here, the main purpose of the action is the interpretation and application of a statute. Injunctive relief is at issue, but it is ancillary in the truest sense of the word. Section 5-7-60 is the only source of Fountain Inn’s power to provide gas service outside its

³ Fountain Inn asserts that the “underlying claim is for statutory construction and an injunction” and, therefore, “the case should be reviewed under the standard of review applicable in equity.” (Init. App. Br. 5). Fountain Inn “supports” this assertion by citing *Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass’n*, 557 S.E.2d 670 (S.C. 2001). The *Doe* case, however did not involve any issue on the meaning or application of a statute. It was a contract action in which the plaintiff sought damages and injunctive relief for an alleged breach of the implied covenant of good faith and fair dealing. Applying the “main purpose rule,” the Court concluded that the request for injunctive relief was the dominant issue and, therefore, the case was to be reviewed under the equity standard of review.

corporate limits. If LCPW has a “designated service area” under § 5-7-60, then that same statute denies Fountain Inn the power to provide gas service in the designated service area absent LCPW’s permission. In other words, the grant or denial of any injunctive relief is a foregone conclusion *after* the interpretation and application of § 5-7-60. Thus, the present action is at law and factual disputes should be reviewed under the “any evidence” standard.

In any event, the result is the same under either standard of review. Clearly, there is some evidence to support the trial court’s ruling – Fountain Inn does not contend otherwise. Thus, this Court should affirm under the “any evidence” standard of review. If this Court may take its own view of the evidence, the evidence fully supports the trial court’s order. Any disputed issue of fact was presented through the competing testimony of witnesses, and this Court should not disturb the trial court’s inherent and expressly noted credibility determinations in favor of its ruling.

Fountain Inn presented the testimony of one witness, Thomas Pitman, who was hired in December 2006 to be Fountain Inn’s gas manager. (R. 325-326). He moved to South Carolina to take this job (R. 335), so he had very little to offer about anything that happened before his arrival. However, he did admit the following on cross-examination:

1. He had no knowledge of any attempt by Fountain Inn, prior to his arrival, to run lines into LCPW’s service area. (R. 335).
2. He knew of no Fountain Inn lines that had been run into LCPW’s service area prior to 2011. (R. 336).
3. He believed that Fountain Inn could provide natural gas service anywhere in the disputed area, even if LCPW was already serving customers in the area, because there was no contract or formal agreement giving LCPW a service territory and, as to § 5-7-60, he was not an attorney. (R. 337-338).

In short, other than being the author of this dispute by seeking to cherry-pick industrial customers in the Owings Industrial Park (R. 329-331), which indisputably is on LCPW's side of the boundary line, Pitman had little to offer on the relevant facts. As a result, he could not and did not dispute the testimony of LCPW's witnesses on the pertinent facts.

In stark contrast, LCPW offered the testimony of five witnesses with personal and intimate knowledge of the relevant facts:

1. Coleman Smoak worked for LCPW from 1977 to 2006, was its general manager from 1985 to 2006, represented LCPW in the 1992 boundary line meeting, and had personal knowledge of how the parties conducted themselves from 1985 to 2006, and even before that time. (R. 253-262; 268).
2. Carey Elliot was Fountain Inn's gas manager at all relevant times, represented Fountain Inn in the 1992 meeting, and had personal knowledge of how the parties conducted themselves from 1992 to 2005. (R. 269-273).
3. Irvin Satterfield worked for LCPW from 1982 to 2014, was its general manager from 2006 to 2014, and had personal knowledge of how the parties conducted themselves from 1992 to 2014. (R. 274-289; 301-302).
4. Eric Heath is an engineer with the firm that handled the system expansions by both parties. He worked on many of those projects, attended the 1992 meeting, and had personal knowledge of how the parties conducted themselves from 1992 to the present. (R. 303-313; 315-320).
5. John Young began working for LCPW in 2000, is the current general manager, and had personal knowledge of LCPW's gas service activity in the disputed area. (R. 320-322).

The trial court specifically and repeatedly relied on the testimony of these witnesses, thereby accepting the veracity of their testimony. (R. 8-9; 11; 13). There is no basis in the record for disturbing the trial court's acceptance of these witnesses' credibility. In short,

the weight of the evidence overwhelmingly supports the trial court's findings and, therefore, the trial court should be affirmed under either standard of review.

STATEMENT OF FACTS

Prior to 1985, LCPW received its natural gas from an 8-inch supply line built in the 1950's that connected to the Transco national pipeline near Fountain Inn. (R. 254; 261; 316-317). With the deregulation of natural gas in the 1980's, substantial pent up demand was released, and there was a general need to expand natural gas systems to reach these new customers. (R. 316). Both parties expanded their systems in their respective areas throughout the late 1980's and 1990's. (R. 309; 316).

By 1985, both parties had expanded their natural gas systems into the surrounding unincorporated area of Laurens County and already had a general understanding on the dividing line between their respective service areas. (R. 254). In 1985, LCPW planned to expand its gas supply line system by adding a 10-inch line to the Transco national pipeline and connecting it to the existing 8-inch line with a 6-inch line. (R. 254-255; 261; 266; 286-287; 317-318). The purpose of this expansion project was three-fold: (1) to better maintain the gas supply to Laurens; (2) to expand LCPW's natural gas capacity to serve the growing demand for natural gas service outside its corporate limits; and (3) to provide redundancy of supply for both of these needs. (R. 13; 261-262; 266; 285-287; 291-292; 313; 315-320). Also in 1985, due to the cost of the planned supply line expansion, the parties' system managers, the mayor of Fountain Inn, and the engineers for LCPW's expansion project met to discuss the future of gas services in the area around the cities and avoiding any duplication of services. (R. 254-255; 261; 354; 222-225). The parties reached a general

As to the remainder of the service areas demarked by the boundary line, LCPW provided natural gas services throughout the service area on its side of the boundary line, including the area in which the Owings Industrial Park is now located. (R. 260; 276-277; 281-282; 287; 321-322). Fountain Inn never solicited or served any customers in this service area, including the area in which the Owings Industrial Park is now located. (R. 260; 262; 272-275; 283; 284; 286; 335-336). The development of the Owings Industrial Park, and the resulting lure of cherry-picking industrial gas customers, was the impetus to the current dispute.

In 2011, after 20 years of each party serving its service area exclusively, Fountain Inn solicited an industrial customer (ZF), which was the first company to build a facility in the new Industrial Park. The entire Park is LCPW's service area, so this was not a boundary dispute. (R. 260; 276-277; 281-282; 287; 321-322). Fountain Inn's new gas manager simply believed that it could serve customers anywhere in LCPW's service area. (R. 337-338).

LCPW objected to Fountain Inn's solicitation – the parties met but failed to resolve the matter. (R. 280-281). LCPW thereafter commenced the present action and sought a preliminary injunction to prohibit Fountain Inn from soliciting customers during the pendency of the lawsuit. (R. 1). While the injunction motion was pending, LCPW secured a contract with ZF. (*Id.* at 5). Laying the service line to ZF only took a few days, because the LCPW simply tapped into its existing 6- inch supply line in the area. (R. 340). This line was part of LCPW's 1985 supply line expansion project, which it had undertaken for this very purpose – to reach and serve customers in its service area.

Any *municipality* may . . . furnish any of its services . . . in areas outside the corporate limits of such municipality by contract . . . , *except* within a *designated service area* for all such services *of another municipality*
[D]esignated service area shall mean an area in which the particular service *is being provided* or *is budgeted* or funds have been applied for *as certified by the governing body thereof*.

(Emphasis added). The clear purpose of this statute is two-fold: (1) allow municipalities to provide their services to areas outside their corporate limits; and (2) encourage them to do so by granting a “designated service area” that excludes any other municipality. The public policy underlying this purpose is equally clear. Much of rural South Carolina does not have access to services enjoyed by municipal residents. The General Assembly enacted § 5-7-60 to encourage municipalities to make those services available. The incentive for doing so, and for undertaking the expense of doing so (*e.g.*, building infrastructure), is the grant of a designated service area that is free from competition by another municipality. The wisdom of this incentive is not subject to judicial review.

The statute is clear on what a municipality must do to obtain a “designated service area.” It must provide service to the area. Alternatively, it must budget or apply for funds to do so, and thereafter certify that it has done so. The only remaining question is whether LCPW satisfied these requirements. The undisputed evidence demonstrates that it did so.

Fountain Inn’s only witness was Thomas Pitman, who had no personal knowledge of the pertinent facts. The undisputed evidence at trial established the following:

1. In 1985, LCPW constructed supply line infrastructure for the purpose of providing service in its service area, and this infrastructure created excess capacity for doing so. (R. 261; 266). This was sufficient to create a designated service area under the Supreme Court’s ruling in *Sanitary Sewer, infra*. (For a complete discussion of *Sanitary Sewer*, see Arg. IV(A), *infra*).

2. Since 1985, LCPW has provided service in the area, has budgeted to do so, and has expended funds to do so. (*E.g.*, R. 362-368).
3. Since at least 1992, and for the next 20 years thereafter, LCPW made its service available and provided service in its service area, including the area in which the Owings Industrial Park was eventually constructed; and Fountain Inn never attempted to do so. This was sufficient to create a “designated service area” under the Supreme Court’s ruling in *Kilgo, infra*. (For a complete discussion of *Kilgo*, see Arg. IV(B), *infra*.)
4. In 2011, before Fountain Inn laid any lines into its service area, LCPW issued a resolution that certified the foregoing facts per § 5-7-60.

In short, the undisputed evidence demonstrates that LCPW did everything necessary to obtain a “designated service area” under § 5-7-60, which included the Owings Industrial Park area. Accordingly, as a matter of law, Fountain Inn cannot serve anyone in this area without LCPW’s permission and, therefore, Fountain Inn’s service to Uniscite is and has always been in violation of § 5-7-60. Thus, the trial court did not err in finding that LCPW had a “designated service area” and that Fountain Inn cannot serve Uniscite or any other customer in that area without LCPW’s permission.

II. The trial court did not find a binding territorial agreement that gave LCPW a “designated service area” under § 5-7-60.

Fountain Inn complains that the trial court impermissibly enforced the 1992 boundary agreement under the following argument:

1. “Municipalities do not have the power to divide territory outside their corporate boundaries.” (Init. App. Br. 13).
2. The 1992 boundary agreement was not binding, because it was not approved by the parties’ governing bodies, and any such approval would have been ineffective, because the agreement involved “governmental functions” and extended beyond the term of the parties’ governing bodies without any statutory authority for doing so. (Init. App. Br. 13-5).
3. Therefore, the trial court erred when it “effectively ruled that the parties had made a binding agreement as to the disputed area” by upholding “an

agreement that the parties did not and could not make,” and “enter[ing] an order granting effect to an agreement the parties could not have made under South Carolina law.” (Init. App. Br. 13, 15).

This is a classic straw man argument. The trial court specifically noted that no breach of contract claim was before it and that the boundary agreement had not been approved by the parties’ governing bodies. (R. 8; 9, n.3). The trial court never based its ruling on any finding or holding that the boundary agreement was an enforceable contract that created a “designated service area” under § 5-7-60. Thus, Fountain Inn’s argument has no merit.

To be sure, the trial court discussed the boundary line, but only as context for finding that LCPW had in fact provided service in the area for 20 years and that Fountain Inn had never served the area. (R. 8-9; 11; 13-14). These findings are not based on any ruling that the boundary agreement was enforceable. Rather, the trial court correctly focused on a critical inquiry under § 5-7-60, which is whether the municipality has provided service in an area, because doing so is a principal statutory means for establishing a designated service area.

In short, the trial court knew that no contract action was before it, never found that a contract existed, never enforced any contract, and never relied on the existence of any contract to support its ruling. Rather, the trial court simply and correctly found that, under the undisputed evidence before it, LCPW had provided natural gas service in the area for more than 20 years, and Fountain Inn had never done so before the dispute at issue here.

In any event, and assuming any undue reliance on the boundary agreement by the trial court, any error was harmless. As shown in Argument I, *supra*, the undisputed evidence in this case demonstrates, as a matter of law, that LCPW has a “designated service area” under § 5-7-60 that includes the Owings Industrial Park.

III. Fountain Inn's "county certification" argument is barred by the law of the case doctrine and has no merit.

Section 5-7-60 defines a "designated service area" as one "in which the particular service is being provided or is budgeted or funds have been applied for *as certified by the governing body thereof*." (Emphasis added). Fountain Inn argues that § 5-7-60 requires a certification from the governing body of the area being served, *i.e.*, Laurens County Council, rather than LCPW. (Init. App. Br. at 8). This is Fountain Inn's only substantive argument against the trial court's ruling on the requirements of § 5-7-60, and it has no merit. See Arg. III(B), *infra*. Moreover, it is the law of this case and the plain meaning of § 5-7-60 that the certification requirement does not apply when establishing a "designated service area" by actually providing service in the area. See Arg. III(A), *infra*. Fountain Inn also makes several public policy and wisdom arguments in support of its "certification" argument (competition, reasonable pricing, monopoly, and political accountability), but such matters are for the General Assembly, not the courts. See Arg. III(C), *infra*. Fountain makes two other assertions that also have no merit. See Arg. III(D), *infra*.

A. Fountain Inn does not challenge the trial court's ruling that no "certification" is needed to create a "designated service area" when a municipality has actually provided service in the area, thereby making it the law of this case and, in any event, § 5-7-60 clearly does not require certification for a "designated service area" established by the municipality actually providing service.

At trial, Fountain Inn argued that LCPW's certification resolution was defective, because it came too late, *i.e.*, it was issued "just as this lawsuit was being filed." (R. 15). The trial court found that the resolution merely certified the undisputed fact that, for twenty years, "LCPW [was] acting as the only provider of natural gas service in the area." (*Id.*). The trial court then rejected Fountain Inn's defective certification argument because, "[u]nder the statute, *Spartanburg Sanitary Sewer District* and *Kilgo*, providing the

particular service in question is enough to establish a designated service area.” (*Id.*) (emphasis added). In short, the trial court held that providing service in an area was enough to establish a “designated service area,” even without a certification from the governing body. Fountain Inn never challenges this ruling on appeal and therefore, right or wrong, it is the law of this case, and it moots Fountain Inn’s “county certification” argument. *Eldridge v. Eldridge*, 728 S.E.2d 24, 28 (S.C. 2010).⁵

In any event, the “certification” requirement in § 5-7-60 plainly does not apply when the designated service area is established by actually providing the service in the area. The language at issue is the following: “[D]esignated service area shall mean an area in which the particular service *is being provided or is budgeted or funds have been applied for as certified by the governing body thereof*. § 5-7-60 (all emphasis added). As the differently emphasized language shows, the statute sets forth two separate ways to establish

⁵ The trial court had made the same ruling earlier in its order:

What is important about *Kilgo* to this case is that *under the language of Section 5-7-60 . . .*, the cities had the right to control provision of a service outside the cities’ corporate limits where the cities were already providing that service by contract, and *the only requirement for designating that area was that the municipality was serving it*.

(R. 13) (all emphasis added). The trial court previously made similar rulings throughout its order:

- (1) [T]his Court concludes that *under the language of Section 5-7-60*, the *area* that LCPW *has served . . . is the LCPW’s designated service area* for furnishing natural gas, and that the City of Fountain Inn may not provide natural gas service in that area without the permission of the LCPW.” (Order at 1) (emphasis added).
- (2) “Based upon the language of Section 5-7-60, the Court agrees that the *area served* by LCPW . . . is the LCPW’s ‘*designated service area*’ for natural gas service.” (Order at 5) (emphasis added).
- (3) “In [*Sanitary Sewer*], the *fact* that the Sewer District had the facilities in place *to provide service* to that area *qualified it as* the Sewer District’s ‘designated service area.’” (Order at 6) (emphasis added).

(See also R. 13-14, noting throughout that actually providing a service established a designated service area, *citing and applying Mathis, Sanitary Sewer, and Kilgo*).

a “designated service area.” First, a service area is established by actually providing the service in the area (“service is being provided”). There is no need to certify this, because it is an existing and demonstrable fact of actual service. Second, a service area can be established without having actually provided the service if it is certified that providing the service “is budgeted or funds have been applied for.” Budgeting or applying for funds indicates an intent to provide the service in an area in the future, and that intent is sufficient to create a service area if it is certified by the governing body that has budgeted to do so or has applied for funds to do so. Thus, certification is needed only when the service is not already being provided but is planned and intended to be provided in the future. Thus, the trial court was correct when it held that “providing the particular service in question is enough to establish a designated service area” and that “*the only requirement for designating that area was that the municipality was serving it.*” (13; 14) (all emphasis added). In any event, and assuming that Fountain Inn has challenged the trial court’s ruling, and assuming further that the certification requirement applies to providing service, Fountain Inn’s “county certification” argument has no merit.

B. Fountain Inn’s “county certification” argument has no merit.⁶

LCPW issued a resolution that certified the following: (1) it is providing and has continuously provided natural gas service to the disputed area since 1985; (2) it has budgeted to provide service in this area; and (3) it has applied funds of its gas system to provide that service. (R. 362-368). The trial court found that this resolution satisfied the certification requirement in § 5-7-60 (R. 11) and later held that this requirement did not apply when service had actually been provided. (See Arg. III(A), *supra*).

⁶ For the remainder of this Argument III, it is assumed that the certification requirement in § 5-7-60 applies when a municipality establishes a designated service area by actually providing service in the area.

Fountain Inn argues that Laurens County Council must issue the certification. This is Fountain Inn's only "certification" argument, and it has no merit for several different reasons. Thus, it is the law of this case that LCPW's resolution otherwise satisfied the certification requirements of § 5-7-60.⁷

The plain and ordinary meaning of "certify" is to "*authenticate or vouch for a thing in writing, [and to] attest as being true or as represented.*" BLACK'S LAW DICTIONARY (5th Ed.) at 207 (1979) (emphasis added).⁸ Manifestly, one governing body cannot authenticate, vouch for, or attest to the truth of another governing body's actions, budget, expenditures, or funding applications. Fountain Inn never explains how Laurens County Council could ever do so, and the reason is simple – Laurens County Council does not have the power or requisite knowledge to certify anything done by LCPW and, therefore, it is impossible for Laurens County Council to issue the certification envisioned by § 5-7-60.⁹

It is absurd to suggest that the General Assembly intended the establishment of a designated service area to rest upon the doing of an impossible act, because it would result in there never being a designated service area under § 5-7-60. Thus, the only reasonable

⁷ At trial, Fountain Inn argued that LCPW's resolution came too late. The trial court rejected this argument (R. 15), and Fountain Inn does not pursue it on appeal, thereby abandoning it. *South Carolina Dep't of Transp. v. M&T Enters. of Mt. Pleasant, LLC*, 667 S.E.2d 7, 15 (S.C. App. 2008). Fountain Inn's only argument is that the statute required a certification from Laurens County Council. As a result, it is the law of this case that LCPW's resolution otherwise satisfied the certification requirement of the statute. *Eldridge v. Eldridge*, 728 S.E.2d 24, 28 (S.C. 2010). Any attempt to resurrect the "timing" argument or otherwise challenge the certification by way of a reply brief would be futile, because an issue cannot be raised for the first time in a reply brief. *McClurg v. Deaton*, 716 S.E.2d 887, 888 n.2 (S.C. 2011). In any event, § 5-6-70 imposes no timing requirements, and it is undisputed that LCPW issued the certification before Fountain Inn obtained any customer in or laid any gas line into LCPW's service area.

⁸ See also merriam-webster.com, giving the full definition of "certify" as "to attest *authoritatively*" and "to attest as *being true*." (Emphasis added).

⁹ All of this dovetails with the plain meaning of "designate," which is to "indicate, select . . . or set apart for a purpose" and to "make known." BLACK'S LAW DICTIONARY (5th Ed.) at 402 (1979) (emphasis added). By undertaking the actions specified in § 5-7-60 and thereafter certifying that it had done so, LCPW made known that it had selected and set apart an area for the purpose of providing natural gas service in the area. See also merriam-webster.com, giving the full definition of "designate" as "to indicate and set apart for a specific purpose" and "to point out the location of."

reading of § 5-7-60 is that the certification must come from the governing body whose conduct, budget, or funding application is being certified. Accordingly, Fountain Inn's "county certification" argument has no merit.

Moreover, were it true that Laurens County Council has the power and knowledge to *certify* LCPW's conduct and budget, requiring a county certification would nevertheless lead to an absurd result. LCPW does not have the power to compel Laurens County Council to certify anything, much less the actions and budget of LCPW itself. Nothing in § 5-7-60 requires Laurens County Council to issue the certification if requested by LCPW, even if LCPW indisputably establishes the facts to be certified. Thus, under Fountain Inn's argument, Laurens County Council would have unbridled control over the creation of a designated service area in the county. Nothing in § 5-7-60 even hints at granting such power to counties, and if the General Assembly intended for a county council to be the sole arbiter of designated service areas within the county, "surely it would have said so," particularly in a "municipal power" statute. *Blackburn v. Daufuskie Is. Fire. Dist.*, 677 S.E.2d 606, 609 n.5 (S.C. 2009); *accord Estate of Guide v. Spooner*, 457 S.E.2d 623, 624 (S.C. App. 1995). Also, the state constitution expressly prohibits counties from providing any gas services in the county. S.C. Const. art. VIII, § 16. Making a county the sole arbiter over a service that it cannot itself provide makes no sense, and it leads to the absurd and unconstitutional result of the county doing indirectly what the constitution prohibits it from doing directly. See *State v. Peak*, 545 S.E.2d 840, 844 (S.C. App. 2001) (axiomatic that courts avoid interpretations of statutes that would lead to unconstitutional results).

Finally, reading a "county certification" requirement into § 5-7-60 would frustrate and interfere with the General Assembly's purpose in providing for a "designated service

area,” which is to encourage municipalities to provide services outside their corporate limits. No municipality would spend its time, money, and resources to establish a “designated service area” under Fountain Inn’s “county certification” theory unless it was confident that the county council would thereafter issue the requisite certification. The only way to achieve this would be a long-term, “designated service area” agreement with the county before providing the service or spending money to provide the service. But this is precisely the type of agreement that Fountain Inn argues cannot be made by a governing body, because it would extend beyond the tenure of the governing body’s members. Moreover, § 5-7-60 plainly requires an after-the-fact certification. The only logical source for this certification is the governing body that has provided the service, budgeted to do so, or applied for funds to do so.

C. Fountain Inn’s “public policy” and “wisdom” arguments are matters that reside in the sole province of the General Assembly.

Fountain Inn makes the following “public policy” and “wisdom” arguments in support of its “county certification” argument:

1. A municipality is not required to charge reasonable rates when providing services outside its corporate area. (Init. App. Br. 7).¹⁰
2. Imposing a “county certification” requirement promotes political accountability, because “Laurens County Council would be *politically accountable* with respect to the *service provided* and *any rates charged*,” whereas LCPW is not. (*Id.* at 8-9, 10) (emphasis added).
3. Competition between Fountain Inn and LCPW would benefit customers by protecting them against “*unreasonable rates* [charged] by a *monopolist* that is *not politically accountable* to those customers.”(*Id.* at 10) (emphasis added).

¹⁰ Fountain Inn’s point here is unclear since it, as a municipality itself, would be constrained by the same duty. If Fountain Inn is arguing that “municipal competition” would lower prices despite this duty, the General Assembly’s decision to grant a “municipal monopoly” under § 5-7-60 is not subject to judicial review. In any event, there is no evidence and no argument that LCPW has charged or is charging unreasonable prices.

In short, Fountain Inn argues that imposing a "county certification" requirement for a "designated service area" would benefit the customers in the area, because it would protect against unreasonable pricing through competition or some reasonable rate requirement imposed by the county on the municipality. All of this is a cleverly disguised attack on the wisdom of § 5-7-60 and the legislative public policy decisions underlying it. Such matters are not subject to judicial review. It was and is for the General Assembly to balance the pros and cons of pricing, competition, and the like in deciding whether one municipality should have the right to serve an area to the exclusion of another municipality.

D. Fountain Inn's remaining assertions about whether LCPW acquired a "designated service area" have no merit.

Fountain Inn makes two other assertions that have no merit within its "county certification" argument. It first asserts that the General Assembly could not have intended that LCPW could "proclaim" a monopoly in an area outside its corporate limits. (Init. App. Br. 8-9). That is not what happened here. LCPW did not acquire its "designated service area" by proclamation. Rather, as required the statute and correctly found by the trial court, LCPW established its "designated service area" by actually providing services in the area, by actually budgeting to provide such services, by actually expending funds to do so, and by thereafter certifying all of this. The "designated service area" does not give LCPW a monopoly, but it does preclude another municipality from providing the same service in the area. The wisdom of the General Assembly's decision to grant this "municipal monopoly" in a "designated service area" is not subject to judicial review.

Fountain Inn next asserts that "LCPW has not budgeted funds specifically for providing service in the area where the new industrial park is located" and has only

“budgeted funds to maintain a safe and consistent supply of gas to the City of Laurens and all LCPW customers.” (Init. App. Br. 9). This argument fails for several reasons:

1. The undisputed evidence is that LCPW has provided service in the area, including the area in which the industrial park is now located. (R. 276). Thus, it matters not whether LCPW budgeted funds for this specific area, because providing service in the area is one of the ways to establish a designated service area under § 5-7-60.
2. Fountain Inn’s argument focuses on the construction of the original supply line to Laurens in the 1950’s and asserts the 1985 expansion project was also for serving the City of Laurens. (Init. App. Br. 9, citing R. 265, ll. 14-25 and R. 266, ll. 1-14). Fountain Inn simply ignores the overwhelming and uncontradicted testimony that the 1985 supply line expansion project was also for constructing infrastructure to serve the LCPW’s service area outside its corporate limits. (R. 261-262; 266; 285-287; 291-292; 313; 315-320). It also ignores the undisputed testimony that this supply line infrastructure was used to provide gas service to ZF, the first customer in the Owings Industrial Park.
3. Fountain Inn’s argument rests upon the erroneous assumption that § 5-7-60 envisions specifically budgeting for a very specific area as opposed to budgeting generally for providing services in a general area. Reading this limitation into the statute would frustrate the clear purpose of the statute, which is to encourage municipalities to make their services available to general areas, not just specific customers. The incentive of a “designated service area” becomes virtually meaningless if it is limited to actual customers or only those very specific areas for which the municipality has very specifically budgeted.

Finally, Fountain Inn argues that a “designated service area” is limited to existing customers with existing contracts. This argument has no merit. See Arg. IV, *infra*.

IV. A “designated service area” under § 5-7-60 is not limited to existing customers and existing contracts.

The trial court discussed three appellate court opinions and concluded that these cases supported its decision that LCPW had a “designated service area” under § 5-7-60, including its ruling that providing service is enough itself to establish a designated service

area without any certification thereof. (R. 11-14) (See Arg. III(A), *supra*). Fountain Inn contends that these cases are distinguishable and support its arguments when read as a whole (Init. App. Br. 11-13). Fountain Inn reviews these cases and others to conclude:

Thus, the inquiry in these cases *focuses* on customer *contracts* and protection of *existing customer* rights. The evidence in this case shows that neither party had *existing* contracts within the proposed industrial park; *thus*, either party should be free to pursue those customers pursuant to § 5-7-60.

Municipalities do have the power to divide territory outside their corporate boundaries. They may enter *contracts* as allowed by § 5-7-60 and other statutes, but *otherwise*, the powers of a municipality are *limited* to the *area within its limits*. The trial court erred in ruling otherwise.

(Init. App. Br. at 13) (emphasis added).¹¹ In short, Fountain Inn argues that a “designated service area” under § 5-7-60 is limited to existing contracts and existing customers. This argument fails for several reasons:

1. It ignores the plain meaning of “area,” which is a “territory” or “region.” BLACK’S LAW DICTIONARY (5th Ed.) at 97 (1979) (emphasis added).¹² And it ignores the plain holding in *Kilgo, infra*, that a municipality’s designated service area is not limited to existing customers with existing contracts.
2. This argument, like the earlier-noted “specific budget” argument, is based on an erroneously narrow view of a “designated service area” that would frustrate the clear purpose of the statute, which is to encourage municipalities to make their services available to general areas, not just specific customers. The incentive of a “designated service area” becomes meaningless if it is limited to existing customers with existing contracts.
3. This argument also ignores the undisputed evidence that LCPW was already serving customers in the general area of the Industrial Park (R. 276) and that LCPW contracted with the first customer in the Industrial Park (ZF) and installed the first service line to the Park before Fountain Inn acquired the second customer (Uniscite) or installed any line to serve the Park.

¹¹ Fountain Inn’s reference to “dividing territory” harkens back to its argument that the trial court erroneously enforced the 1992 boundary agreement, but that was not the trial court’s ruling. See Arg. II, *supra*.

¹² See also merriam-webster.com, giving the full definition of “area” as including “a geographic region.”

Finally, as demonstrated below, Fountain Inn's argument hinges upon its erroneous reading of the cases cited in support of its argument.

A. *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 321 S.E.2d 258 (S.C. 1984).

In *Sanitary Sewer*, the defendant ("the city") sought to expand its sewer service beyond its corporate limits and into an adjacent sewer district ("the district"), which was empowered to provide sewer service directly to customers in the area by a 1970 Act. Relying on the subsequent 1975 Home Rule Act that enacted § 5-7-60, the city argued that § 5-7-60 gave it authority to extend its sewer service beyond its corporate limits and into the district's service area. The Supreme Court held that § 5-7-60 precluded the city from doing so under the following analysis: (1) § 5-7-60 precludes a municipality from serving an area outside its corporate limits if that area is in the "designated service area" of another political subdivision; (2) the district had already constructed main lines as infrastructure in the area to handle the waste water generated in the area; (3) the district thus had a "designated service area" under § 5-7-60 in the disputed area; and (4) under § 5-7-60 itself, the city could not provide sewer services in the area. 321 S.E.2d at 260-261.

Here, the trial court cited *Sanitary Sewer* for the salient point that building infrastructure in an area for serving the needs of the area creates a "designated service area" under § 5-7-60. (R. 11-12; 13). The same facts are present here, because the undisputed testimony is that a major purpose of LCPW's 1985 supply line expansion project was to create the supply infrastructure for providing natural gas service in the area.¹³

¹³ In *Sanitary Sewer*, the city argued that it could more economically serve certain areas. The Court rejected this argument. 321 S.E.2d at 261. Fountain Inn made similar arguments but the trial court rejected them. (R. 14). Fountain Inn does not challenge this ruling, thereby making it the law of this case that cannot be challenged later by reply brief. *Eldridge*, 728 S.E.2d at 28; *McClurg*, 716 S.E.2d at 888 n.2.

Fountain Inn acknowledges the Supreme Court's ruling that the district's actions of building main line infrastructure gave rise to a "designated service area" under § 5-7-60 (Init. App. Br. 11), but then argues as follows:

LCPW could make similar arguments if Fountain Inn sought to provide services within the City of Laurens; however, in this case, LCPW is not the governing body with respect to the area in question. Therefore, it has not established a designated service area.

(Init. App. Br. 11-12). Fountain Inn apparently reads *Sanitary Sewer* as based on issues of crossing political subdivision boundaries and being the governing body for the area. There is no such ruling in *Sanitary Sewer*, which explains why Fountain Inn cites no part of *Sanitary Sewer* to support its argument. (See Init. App. Br. at 11-12).¹⁴

In short, the trial court correctly read and applied the salient point in *Sewer District*, to-wit: that the construction of infrastructure in the area for providing service in the area satisfies the definition of "designated service area" under § 5-7-60. That is precisely what happened here. Fountain Inn's attempt to avoid this salient point has no support in the Supreme Court's actual analysis and ruling. Moreover, the ruling in *Sewer District* provides no support for Fountain Inn's argument that a "designated service area" is limited to existing customers with existing contracts. To the contrary, the Supreme Court found that building infrastructure in the area, with no mention of any existing customer or contracts in the area, gave rise to a "designated service area" under § 5-7-60.

¹⁴ Returning to the actual language of *Sanitary Sewer*, the Court rejected the city's § 5-7-60 claim as follows: (1) the Court noted that the city based its claim on § 5-7-60; (2) then quoted § 5-7-60; and (3) then found that the district had the power to construct a sewer system in the area and had built the infrastructure for doing so. 321 S.E.2d at 260-261. The Court then applied § 5-7-60: "The Sewer District *thus would* fit the definition of a *designated service area*, and the City *would therefore* be precluded from extending its collection lines to areas outside its corporate limits *absent permission* from the Sewer District." 321 S.E.2d at 261 (emphasis added). The foregoing represents the entirety of the Court's analysis and ruling. It is a straightforward application of § 5-7-60 to the facts that had nothing to do with any notion of crossing corporate boundaries of a political subdivision or who is the governing body of the designated service area.

B. *City of Darlington v. Kilgo*, 393 S.E.2d 376 (S.C. 1990).

In *Kilgo*, the plaintiff (“the city”) had a “designated service area” for fire protection under § 5-7-60 that extended outside the city’s corporate limits, as measured by five road miles from the city’s fire station. 393 S.E.2d at 377; see also *id.* at 379 (Goolsby, A.A.J., dissenting).¹⁵ Thereafter, pursuant to S.C. Code Ann. § 4-19-10 (Rev. 1986), which was enacted in 1984 after the 1975 enactment of § 5-7-60, the defendant (“the county”) passed an ordinance creating a county-wide fire protection district that included the city’s “designated service area.” *Id.* at 377. The city sued, and the trial court granted summary judgment to the city, holding that the county’s fire district could not include the city’s service area without the city’s consent. *Id.* The Supreme Court affirmed.

Section 4-19-10 gave counties the power to create a county fire district but further provided that the county’s “service area” could not include an “area” already being served by another political subdivision. *Id.* at 377-378 (emphasis added). The county argued that the city’s service area did not qualify for protection under § 4-19-10, because the city’s limited service in the area did not qualify as a “service area” under § 4-19-10. The dissent agreed with this argument, *id.* at 379-382, but the majority expressly rejected it as follows:

[The] legislative intent [in § 4-19-10] was to allow municipalities to continue to offer fire protection services in *areas* previously served under contract, and that such *areas* could not be included in any county district plan without prior agreement with the municipality.

Id. at 378 (emphasis added). Thus, the majority held that “the five-mile radius protected by the [city] under contract constitutes a ‘service area.’” *Id.* (emphasis added). The majority also held that there was no conflict between the county’s power under § 4-19-10

¹⁵ *Kilgo* involved two cities (Darlington and Hartsville) with the same five-mile radius “designated service area.” For ease of reference, this brief refers to them jointly as “the city.”

and “the [city’s] *statutory rights under* § 5-7-60.” *Id.* at 378-379 (emphasis added). If there was “an existing municipal service *area* within the county,” the county could not include that area in its fire district absent an agreement with the city. *Id.* at 379 (emphasis added).

The dispute between the dissent and the majority illuminates the salient point in *Kilgo*. The city had contracts with only one-third of the customers in the area. 321 S.E.2d at 377 n.1, 379-380. The dissent concluded that the “service area” protection afforded by § 4-19-10 extended only to those customers but did not otherwise extend to the five-mile radius area claimed by the city, *i.e.*, the county could include any part of the five-mile radius in its district except for customers with existing municipal contracts. *Id.* at 380-381. The majority rejected this conclusion, holding that the city’s service area included the entire five-mile radius area, because the city contracted with customers in the area and made its service available in the area. *Id.* at 378-379.

Here, the trial court relied on *Kilgo* for this salient point, *i.e.*, that “the only requirement for designating [a service] area was that the municipality was serving it [and] that area included the entire area in which the service was made available by contract and not just to customers with whom the [city] had existing contracts.” (R. 13). The facts are the same here – LCPW is providing service to existing customers in the disputed area and makes it service available in the area.

On appeal, Fountain Inn blithely ignores the salient ruling in *Kilgo*. After making summary references to the Supreme Court’s ruling therein, Fountain Inn argues that two subsequent cases make it clear that the protection afforded by § 5-7-60 is limited to customers with existing contracts. (Init. App. Br. 12-13). Those cases are *Carolina Power* and *City of Spartanburg*, both *infra*. Fountain Inn simply misreads these cases.

1. *Carolina Power & Light, Co. v. Darlington County*, 431 S.E.2d 580 (S.C. 1993).

In *Carolina Power*, the county created a fire protection district and imposed taxes on the property in the district. The plaintiff (CP&L) brought a tax protest suit against the county, arguing that it was not properly included in the district. CP&L argued that it was in the City of Hartsville's ("the city") fire protection service area by contract, this being the same five-mile radius designated service area approved in *Kilgo, supra*.

Two controlling facts distinguished *Carolina Power* from *Kilgo*. First, CP&L was not in the city's service area, which was defined as the area within five-road miles from the city's fire station. CP&L was within five miles "as the crow flies," but it was not within five-road miles of the city's fire station and therefore not in the city's service area. 431 S.E.2d at 581 & n.1. Second, in addition to not being in the city's service area, CP&L did not have a valid fire service contract with the city. *Id.* at 582-584. Thus, the Supreme Court upheld the trial court's denial of CP&L's tax protest.¹⁶

Importantly, nothing in *Carolina Power* changed the salient point in *Kilgo, i.e.*, that the city's service area included the entire five-road miles radius area and not just the customers with whom the city had existing contracts. Indeed, the Supreme Court went to some length to make it clear that CP&L was not within the service area that it upheld in *Kilgo*, which included the entire area and not just customers with existing contracts.

On appeal, Fountain Inn argues that *Carolina Power* stands for the proposition that only an existing customer with an existing contract is to be protected by § 5-7-60. (Init. App. Br. 12-13). There simply is no such ruling in *Carolina Power*. To the contrary, the

¹⁶ There was an agreement between the city and CP&L, but it was not an enforceable contract, because *inter alia* it was signed by the fire chief, who did not have the capacity to enter the contract on behalf of the city. Thus, CP&L did not have a fire services contract with the city. 431 S.E.2d at 581-583.

only reasonable reading of *Carolina Power* is that the Supreme Court reaffirmed its ruling in *Kilgo* on the scope of the city's service area as being the entire five-road mile area and not just where the city had existing customers with existing contracts. CP&L could not take advantage of this ruling in *Kilgo*, because it was not within the city's service area. Thus, to potentially exclude itself from the county's fire district, CP&L had to prove the existence of a valid fire service contract with the city, but it failed to do so. CP&L therefore was in the county's district and had to pay the property taxes imposed by the county.

2. *City of Spartanburg v. County of Spartanburg*,
401 S.E.2d 158 (S.C. 1991).

The plaintiff ("the city") provided fire service for several years by contract to Draper, an industrial plant located outside the city limits but "bounded on all sides by property within [the city's] limits." *Id.* at 159. In other words, Draper was a county island within the sea of the city's limits. The city enacted an ordinance whereby it would provide fire services to contiguous areas only by annexation into the city. *Id.* at 159. The contract between the city and Draper lapsed, and Draper declined annexation. *Id.* Thus, there was no service contract between Draper and the city. More importantly, after the city adopted the ordinance, the city only provided fire services within its corporate limits. *Id.*

In 1988, pursuant to § 4-19-10, the defendant ("the county") created the Draper Corporation Fire Service Area, which encompassed only the Draper plant, and then contracted with Glendale Area Fire District to provide fire service in the Draper Area. *Id.* at 159. The city sued, challenging the validity of the Draper Corporation Fire Service Area and seeking an injunction against its continued existence. *Id.* The Supreme Court summarily rejected the city's argument under the following analysis: (1) as a general rule, a city has no standing to challenge a county's creation of a special purpose district that is

not within the city's limits; (2) to have standing, a city "must allege an infringement of its own proprietary interest *or statutory rights*," but the city "alleged no such infringement"; and (3) there was no existing contract between Draper and the city, "and this case is *clearly distinguishable* from our recent decision in [*Kilgo, supra*]." *Id.* (emphasis added).

Kilgo was "clearly distinguishable" because, unlike the city in *Kilgo*, the city in *City of Spartanburg* did not have a service area outside its corporate limits. Rather, by force of its own 1987 ordinance, the city's service area was limited to its corporate limits as they then existed or were thereafter expanded by annexation.

Fountain Inn argues that *City of Spartanburg* is similar to *Carolina Power*, an apparent reference to its meritless argument that *Carolina Power* changed the rule in *Kilgo* and limited the scope of a § 5-7-60 "designated service area" to existing customers with existing contracts. To support this argument, Fountain Inn asserts that *City of Spartanburg* "*distinguished [Kilgo]* and found that a city could not challenge the creation of a [fire service district] outside its corporate limits with respect to a former city customer with which the city no longer had an existing agreement." (Init. App. Br. 13) (emphasis added).

The Supreme Court, however, did not "distinguish *Kilgo*" – rather, it distinguished *City of Spartanburg* from *Kilgo*. This is not mere semantics, because it makes clear that the Supreme Court did not alter the ruling in *Kilgo*. Moreover, what distinguished the two cases was that the city in *Kilgo* had a service area outside its corporate limits and the city in *City of Spartanburg*, by force of its own 1987 ordinance, did not. Thus, because Draper was outside the city's limits, was not in the city's service area, and was not under contract with the city, the city did not and could not allege an infringement of its statutory rights and therefore did not have standing to challenge the creation of the fire district. This was

the actual ruling of the Supreme Court in *City of Spartanburg*, and nothing changed the salient ruling in *Kilgo*, which the trial court correctly applied here.

C. *Mathis v. Hair*, 594 S.E.2d 851 (S.C. App. 2002).

In *Mathis*, there was a dispute over the allocation of funds from the South Carolina Fireman's Insurance and Inspection Fund ("the Fund") between the city and county fire departments. The central issue was the meaning of "service area" as used in S.C. Code Ann. § 23-9-420 (Rev. 2007), because the allocation was based on the property values in the "service area" of each fire department. Section 23-9-40 did not define "service area," and the county treasurer concluded that the allocation should be based on the corporate limits of the city and county, even though the city provided fire service to areas within the county district pursuant to a contract with the county. The trial court agreed with the county treasurer, but the Court of Appeals reversed under the following analysis: (1) the plain and ordinary meaning of service area "is the *area* where the fire department provides services"; (2) this meaning is bolstered by that term as used and defined in other statutes and cases, including § 5-7-60 and *Kilgo, supra*; and (3) therefore, the funds must be allocated between the city and county fire departments based on property values within the areas that each actually provides fire service. 594 S.E.2d at 854.

Here, the trial court simply and correctly noted that the Court of Appeals defined "service area" under § 23-9-420 by relying in part on the definition in § 5-7-60, to-wit: "an *area* in which the service is being provided." (R. 13) (emphasis added). Thus, the trial court correctly concluded that *Mathis*, like *Sanitary Sewer* and *Kilgo*, supported its ruling

that LCPW's designated service area under § 5-7-60 included "the *entire area* in which the LCPW provides service by contract." (R. 13-14) (emphasis added).¹⁷

On appeal, in a footnote, Fountain Inn correctly notes that *Mathis* did not arise under § 5-7-60, then accuses the trial court of failing to provide the full context of *Mathis*, then quotes *Mathis*, and then summarily and without explanation asserts that "*Mathis* is consistent with Fountain Inn's arguments relating to § 5-7-60 and [*Kilgo*]." (Init. App. Br. 11 at n.5). There simply is no such "consistency." *Mathis*, like all of the other cases, concerned the "area" in which services were being provided, not simply the location of existing customers with existing contracts. More importantly, like all of the prior cases, *Mathis* again made it clear that providing service in an area was the key factor in defining the existence and scope of a statutory "service area."

¹⁷ The facts in *Mathis* were somewhat complicated. The Fund operated in the following manner: (1) The Fund was financed by payments from all fire insurers in South Carolina equaling 1% of all premiums received by the insurer, accompanied by a report that allocated the payment according to the county where the insured property was located; (2) the insurers made their payments to the state treasurer, who in turn disbursed the funds to the county treasurers in accordance with the county allocation report from the insurers; and (3) the county treasurer then disbursed the funds to local fire departments based on S.C. Code Ann. § 23-9-420 (1989), which required disbursements on the basis of the assessed value of real estate improvements "within the *service areas* of the fire department." 594 S.E.2d at 852 (emphasis added). The controversy focused on the meaning of "service area" as used in § 23-9-420, which did not define the term. *Id.* at 852, 854. The controversy arose under the following facts: (1) the county had seven tax districts, all of which received fire services from either the city fire department or the county fire department; (2) two of the tax districts were within the city's limits, and the city fire department provided fire service to the entirety of both of these districts; (3) the remaining five tax districts were within the unincorporated area of the county, but the city fire department provided fire service to some of these areas pursuant to a contract with the county; (4) the county treasurer determined that "service area," as used in § 23-9-420, meant the area within the city's limits and the area within the unincorporated areas of the county, and she therefore divided and disbursed the Fund based on the relative assessed property values within the city's limits and those in the unincorporated area of the county; and (5) the city fire department challenged this allocation, contending that the disbursement to it must include the assessed value of the properties in the county where the city fire department provided fire service, *i.e.*, the city fire department argued that its "service area," as used in § 23-9-420, included the county areas where the city provided fire service. 594 S.E.2d at 852-853. There was disagreement over which department provided service to which area so, after reversing the trial court's affirmance of the county treasurer's action, the Court of Appeals remanded for a factual determination of this question, with the Fund disbursement to thereafter be allocated accordingly. *Id.*

CONCLUSION

The undisputed evidence demonstrates as a matter of law that LCPW has established a "designated service area" under the plain meaning of § 5-7-60. For this reason, and for the other reasons set forth above, it is respectfully submitted that this Court should affirm the appealed order.

Respectfully Submitted,



Robert L. Widener
MCNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

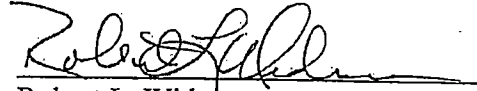
Bernie W. Ellis
MCNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940

Columbia, SC
March 22, 2016

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b) SCACR and the Supreme Court Order of August 13, 2007.



Robert L. Widener
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 21 2016

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

SC Court of Appeals

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No.: 2011-CP-30-309

Commissioners of Public Works of the City of
Laurens, South Carolina, also Known as the Laurens
Commission of Public Works, ...Respondent,

v.

City of Fountain Inn, South Carolina, ...Appellant.

REPLY BRIEF

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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381
Attorneys for Appellant
City of Fountain Inn, South Carolina

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STANDARD OF REVIEW	1
ARGUMENT IN REPLY	3
I. THERE WAS NOT A VALID BOUNDARY AGREEMENT BETWEEN LCPW AND FOUNTAIN INN.	4
II. LCPW HAS NOT ESTABLISHED A DESIGNATED SERVICE AREA WITH RESPECT TO THE DISPUTED AREA.....	6
CONCLUSION.....	11

TABLE OF AUTHORITIES

CASES

<i>Auto Owners Ins. Co. v. Rollison</i> , 378, S.C. 600, 663 S.E.2d 484 (2008)	2
<i>Bentley v. Spartanburg County</i> , 398 S.C. 418, 730 S.E.2d 296 (2012)	7
<i>Boggero v. S. Carolina Dep't of Revenue</i> , 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015)	3
<i>Calcaterra v. City of Columbia</i> , 315 S.C. 196, 432 S.E.2d 498 (Ct. App. 1993)	8
<i>Cunningham v. Anderson Cnty.</i> , 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), <i>aff'd in part and rev'd in part on other grounds by</i> 414 S.C. 298, n.1, 778 S.E.2d 884, n.1 (2015)	5
<i>Doe v. S. Carolina Med. Malpractice Liab. Joint Underwriting Ass'n</i> , 347 S.C. 642, 557 S.E.2d 670 (2001)	2
<i>Eargle v. Sumter Lighting Co.</i> , 110 S.C. 560, 96 S.E. 909 (1918)	3
<i>Greenville Cnty. v. Stover</i> , 198 S.C. 240, 17 S.E.2d 535 (1941)	3
<i>Jackson v. Jackson</i> , 234 S.C. 291, 108 S.E.2d 86 (1959)	3
<i>Jordan v. Montgomery Ward & Co.</i> , 442 F.2d 78 (8th Cir. 1971)	6
<i>Laird v. Nationwide Ins. Co.</i> , 243 S.C. 388, 134 S.E.2d 206 (1964)	7
<i>Normandy Corp. v. South Carolina Dep't of Transp.</i> , 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009)	2
<i>Olmstead v. Shakespeare</i> , 348 S.C. 436, 559 S.E.2d 370 (Ct. App. 2002)	7
<i>S.C. Pub. Serv. Auth. v. Arnold</i> , 287 S.C. 584, 340 S.E.2d 535 (1986)	2
<i>Spartanburg Sanitary Sewer Dist. v. City of Spartanburg</i> , 283 S.C. 67, 321 S.E.2d 258 (1984)	9
<i>State v. Petty</i> , 270 S.C. 206, 241 S.E.2d 561 (1978)	2
<i>Timmerman v. Timmerman</i> , 331 S.C. 455, 502 S.E.2d 920 (Ct. App. 1998)	2
<i>Town of Summerville v. City of N. Charleston</i> , 378 S.C. 10, 662 S.E.2d 40 (2008)	3
<i>Williams v. Williams</i> , 329 S.C. 569, 496 S.E.2d 23 (Ct. App. 1998) <i>rev'd on other grounds</i> , 335 S.C. 386, 517 S.E.2d 689 (1999)	2

STATUTES

S.C. Code Ann. § 5-7-60	passim

OTHER AUTHORITIES

82 C.J.S. <i>Statutes</i> § 371 (a),(c) (1999)	7

The sole issue for this Court to decide on appeal is whether, pursuant to S.C. Code Ann. § 5-7-60, the Laurens Commission of Public Works (“LCPW”) has established a designated service area for the provision of natural gas services as shown on a map drawn by the parties in 1992 (the “1992 Map”). The City of Fountain Inn (“Fountain Inn”) argues that LCPW has not established a designated service area as shown on the 1992 Map, and thus, both parties are free to compete for customers outside their respective municipal limits.

STANDARD OF REVIEW

LCPW seeks to exclude Fountain Inn from providing natural gas service in a newly developed industrial park (“industrial park” or “disputed area”). Realizing that LCPW and Fountain Inn did not and could not have made an agreement assigning natural gas territory in perpetuity, LCPW dropped its claims for breach of contract and promissory estoppel at trial. (R. at 9, n.3; 324:14-325:19). The only remaining claims were for declaratory judgment and injunctive relief based on LCPW’s theory that it had established a designated service area pursuant to S.C. Code Ann. § 5-7-60 and therefore could exclude Fountain Inn from providing natural gas service on the LCPW side of the line. The trial court agreed and ordered, “LCPW has complied with the requirements to establish a territory on the southern and eastern side of the boundary line on the 1992 Map as the LCPW’s designated service area for a particular service, natural gas, under S.C. Code Ann. § 5-7-60.” (R. at 15).

Given LCPW’s claim for injunctive relief accompanied by a request for statutory construction, this Court’s review is in equity. The injunctive relief is not incidental—LCPW’s main purpose in filing this action is its desire to enjoin Fountain Inn from competing for customers in the disputed area. Thus, an equitable standard of review

applies. *Doe v. S. Carolina Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001) (holding that since “main purpose” of action was for injunctive relief, the appellate court could take its own view of the facts).

The cases cited by LCPW are inapplicable because in those cases the question of statutory construction was coupled with relief at law. For instance, *Normandy Corp. v. South Carolina Dep't of Transp.*, 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009) arose in the context of condemnation. As stated in *Normandy*, “[c]ondemnation actions are actions at law.” *Id.* at 402, 688 S.E.2d at 141 (citing *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 537 (1986)). *Timmerman v. Timmerman*, 331 S.C. 455, 502 S.E.2d 920 (Ct. App. 1998) holds that an action seeking relief under the Omitted Spouse Statute is an action at law; importantly however, the case cited by *Timmerman* for that proposition, *Williams v. Williams*, 329 S.C. 569, 573, 496 S.E.2d 23, 25-26 (Ct. App. 1998) *rev'd on other grounds*, 335 S.C. 386, 517 S.E.2d 689 (1999), makes the crucial distinction that in a case where equitable relief is sought, as is the case here, the action is in equity. In *Auto Owners Ins. Co. v. Rollison*, 378, S.C. 600, 606-07, 663 S.E.2d 484, 487 (2008), the request for declaratory relief was tied to a contract dispute, which sounds at law. Lastly, *State v. Petty*, 270 S.C. 206, 208, 241 S.E.2d 561, 562 (1978) arose from an action for forfeiture of property. “An action for forfeiture is a civil action at law.” *Ducworth v. Neely*, 319 S.C. 158, 162, 459 S.E.2d 896, 899 (Ct. App. 1995). Thus, these cases cited by LCPW are distinguishable from the instant case.

This is not an action seeking to assert a claim under a statute, but rather an action seeking injunctive relief based on the construction of a statute. As such, the standard of review is equitable and this Court is not bound by the trial court’s factual findings.

Regardless, the parties are in agreement that the construction of S.C. Code Ann. § 5-7-60 presents a question of law for the Court. *See Boggero v. S. Carolina Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.”).

ARGUMENT IN REPLY

As an initial matter, LCPW appears to take the position that Fountain Inn’s evidence is limited to that provided by its witness. (*See* Respondent’s Brief at Standard of Review). This is simply not the case. *See Jackson v. Jackson*, 234 S.C. 291, 299, 108 S.E.2d 86, 90 (1959) (“We think the trial Judge . . . fell into error when he based his ruling upon the fact that the appellant did not put up any witnesses in his behalf. He overlooked the settled rule of law that the appellant’s defense could be supplied by the witnesses for the respondent.”); *Greenville Cnty. v. Stover*, 198 S.C. 240, 247, 17 S.E.2d 535, 537 (1941) (“[P]roof of a defendant’s defense can be supplied by a plaintiff”); *Eargle v. Sumter Lighting Co.*, 110 S.C. 560, 566, 96 S.E. 909, 911 (1918) (“It is immaterial from whose witnesses—whether plaintiff’s or defendant’s—the evidence in support of an element of damage or of the cause of action or defense may come. Either party has the right to make out or to strengthen his case or defense on the examination of the witnesses of his adversary.”). In this case, the law and the preponderance of the evidence as taken from all witnesses shows that the trial court erred in finding LCPW has established a designated service area pursuant to S.C. Code Ann. § 5-7-60.

I. There was not a valid boundary agreement between LCPW and Fountain Inn.

There is no dispute that both parties receive their natural gas supply from the Transco pipeline in Fountain Inn and that both parties had infrastructure near the disputed area. (R. at 326:22-25; 265:17-20; 338:25-339:8). Further, there is no dispute that the disputed area was undeveloped at the time the industrial park was announced. (See R. at 286:11-13; 315:12-18; 331:12-16; 371). Neither party presented evidence of contracts or customers served in the disputed area prior to the establishment of the industrial park. LCPW instead presented general testimony that it served throughout its “territory” as shown on the 1992 Map. (See R. at 260:7-9; 8, 11). It is also undisputed that both parties were required to build lines to serve the industrial park. (R. at 338:25-339:8).

In order to get around these undisputed facts, LCPW and the trial court relied on the 1992 Map, which allegedly reflects a boundary agreement between the parties. This is plainly reflected in the bullet points presented by LCPW in its Statement of the Case. As found by the trial court, “this Court concludes that under the language of Section 5-7-60, the area that the LCPW has served, which is on the southern and eastern side of the boundary line shown on the [1992 Map], is the LCPW’s service area for furnishing natural gas” (R. at 7). The trial court’s order does not contain any rulings specific to any customer, and instead finds that all deviations from the 1992 Map were with consent. (R. at 8; 13-14).¹

However, the 1992 Map is a nullity. It stems from an agreement that LCPW and Fountain Inn could not have made as a matter of law, and as a result, the trial court’s

¹ Respondent’s brief suggests that the trial court made findings as to a specific Fountain Inn customer, Uniscite. (Respondent’s Brief at I). This is not the case. The order does not include any mention of Uniscite, and Fountain Inn contends its existing contracts remain intact.

order gives effect to an invalid agreement. In other words, LCPW is being allowed to sneak through the back door what would not fit through the front. The parties could not agree to a boundary, but LCPW has argued and the trial court found that the 1992 Map creates a boundary line—despite the fact that there was not a valid agreement and the parties could not have made such an agreement.

LCPW does not appear to dispute that the parties could not have made a long-term agreement with respect to service areas for natural gas service and makes no argument on this point. (Respondent's Brief at II). This is because the law is well-established that such an agreement would be null and void. *See, e.g., Cunningham v. Anderson Cnty.*, 402 S.C. 434, 441-50, 741 S.E.2d 545, 550-54 (Ct. App. 2013), *aff'd in part and rev'd in part on other grounds by* 414 S.C. 298, n.1, 778 S.E.2d 884, n.1 (2015) (dismissing writ of certiorari on this issue). Moreover, the alleged agreement was not ratified by Fountain Inn's City Council (R. at 273:18-23; 8) and was only ratified by LCPW the same day this action was filed. (R. at 362-364).

The alleged agreement and the 1992 Map form the basis for the trial court's finding that LCPW had established a designated service area. (R. at 7-16). The trial court adopted the 1992 Map as the boundary. LCPW's brief also relies on the alleged agreement and the 1992 Map. (*See* Respondent's Brief at Statement of Facts). In the absence of the 1992 Map and the alleged agreement, there is no basis for finding that LCPW provided service in the disputed area. The testimony only supports that LCPW provided service in accordance with the 1992 Map, not that it had existing customers and contracts within the disputed area. Accordingly, the trial court erred in finding that LCPW provided service across the entire area reflected on the 1992 Map as the 1992

Map does not reflect any valid agreement by the parties. Quite simply, if there is no agreement, there cannot be a designated service area created along the boundary line shown on the 1992 Map.

II. LCPW has not established a designated service area with respect to the disputed area.

Fountain Inn has argued throughout this case that LCPW has not created a designated service area with respect to the disputed area because it was not serving customers there and because there was no certification from the governing body of that area as to the provision of service, budgeting of funds, or application for funds.² The parties have a fundamental dispute about the construction of S.C. Code Ann. § 5-7-60.

Fountain Inn agrees with LCPW that “that the cardinal rule of statutory construction is to give effect to the legislature’s intent, and the best evidence of that intent is the plain meaning of the words used in the text of the statute.” (Respondent’s Brief at I). “[C]ourts may not enlarge by construction the language of a clear and unambiguous statute.” *Jordan v. Montgomery Ward & Co.*, 442 F.2d 78, 82 (8th Cir. 1971). As stated by the South Carolina Supreme Court:

[C]ourts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Legislature, and it is the province of the courts to construe, not to make, the laws. There is a marked distinction between liberal construction of statutes, by which

² A review of the record shows that Fountain Inn has been consistent in making these arguments before this Court and before the trial court. (R. at 147-159; 173-197; 208-228; 229-231). As such, Fountain Inn has fully appealed the trial court’s determination that LCPW established a designated service area as defined by the 1992 Map and the law of the case doctrine is inapplicable.

courts, from the language used, the subject-matter, and the purposes of those framing them, find out their true meaning, and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate and recognized rule of construction, while the latter is judicial legislation, forbidden by the constitutional provisions distributing the powers of government among three departments, the legislative, the executive, and the judicial.

Laird v. Nationwide Ins. Co., 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) (quotation omitted); *Bentley v. Spartanburg County*, 398 S.C. 418, 426, 730 S.E.2d 296, 301 (2012) (“[W]e are interpreters not legislators and are bound by the language of [the statute] as written.”). Therefore, the focus here is on the language of the statute.

As set forth in the S.C. Code Ann. § 5-7-60, “[a]ny municipality may perform any of its functions, furnish any of its services . . . and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract” Thus, the statute is designed to allow a municipality to provide its services outside its limits by contract.

The statute then creates a limited exception to this general rule as follows:

except within a designated service area for all such services of another municipality or political subdivision For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *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.

As an exception, this portion of the statute should be narrowly construed in order to give effect to the statute’s primary goal—allowing municipalities to provide services outside their boundaries by contract. *See Olmstead v. Shakespeare*, 348 S.C. 436, 441, 559 S.E.2d 370, 373 (Ct. App. 2002); 82 C.J.S. *Statutes* § 371 (a),(c) (1999) (“Since an

exception must be construed in conformance with the purpose and meaning of the statute in which it is contained, all doubts and implications must be resolved in favor of the general statute or rule, rather than in favor of the exception.”). Under the plain language of the statute, service by contract outside municipal boundaries is the rule and designated service areas are the exception. LCPW has flipped this rule on its head and argued that the primary focus should be the creation of designated service areas rather than the ability of municipalities to provide services outside their municipal boundaries by contract.

The general rule of service by contracts makes sense given the common law backdrop for services extended by cities outside their limits. Such service is not mandatory, is controlled by contracts, and is not subject to any requirement of reasonableness. *Childs v. City of Columbia*, 87 S.C. 566, 570, 70 S.E. 296, 298 (1911); *Sloan v. City of Conway*, 347 S.C. 324, 330-31, 555 S.E.2d 684, 687 (2001). In addition, cities have a duty to prioritize revenues for their taxpayers over the needs of non-resident customers. *Calcaterra v. City of Columbia*, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993). In such a case, if service is limited to contracts, customers are free to pursue other providers in the event they are unhappy with the service or the rates charged. Thus, Fountain Inn’s policy arguments are absolutely consistent with the plain language of the statute and the policies underlying home rule. It is LCPW’s arguments that are inconsistent.

The language of the exception requires two things in order to establish a designated service area: (1) “an area in which the particular service is being provided or is budgeted or funds have been applied for”; and (2) “as certified by the governing body

thereof.” S.C. Code Ann. § 5-7-60. The requirement that the certification be made by the governing body for the area is consistent with the general principles of home rule, which was designed to bring local government back to local governing bodies rather than concentrating those powers in the county’s legislative delegation. *Knight v. Salisbury*, 262 S.C. 565, 571, 206 S.E.2d 875, 877 (1974) (“It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol. If the counties are to remain units of government, the power to function must exist at the county level.”). The designated service area exception was designed to protect existing customer contracts and municipal or special purpose district boundaries, not act as an offensive tool for the creation of extra-territorial monopolies. See *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984).

Given this backdrop, it stands to reason that the local government for the area in question must be the one providing any certifications with respect to services for its citizens. LCPW seeks to remove the local “governing body thereof” from the equation. Such a result would be absurd and is inconsistent with home rule and the plain language of the statute.

LCPW’s argument, when taken to its logical end, would allow a city to establish a designated service area in any area of the state simply by budgeting funds to provide such service, provided someone else was not already serving there. Counsel for LCPW acknowledged the possible extremes to which a designated service area might be carried under its construction when he mused at trial “does this mean it goes on forever, does this mean we can go all the way to Charleston.” (R. at 345:5-7). By way of example under

LCPW's approach, LCPW could certify a designated service area in Charleston County and exclude others from serving there without ever entering a contract or ever providing a service as long as the area was not a part of the designated service area of another entity. This cannot be the rule.

Based on its argument, LCPW contends it is somehow in a better position to certify as to service to the citizens of Laurens County than Laurens County Council. This is notwithstanding the inherent conflict of interest between non-citizen customers and citizen customers.

LCPW has also pointed to its own certification. (R at 362-364). This resolution was issued the same day this action was filed. Moreover, the certifications are based on the entire boundary line shown on the 1992 Map. There are no specific certifications as to the disputed area with respect to customers served or expenditures made or budgeted.³ Thus, LCPW attempted to proclaim a designated service area by fiat the very day this action was filed. This cannot be the way S.C. Code Ann. § 5-7-60 was designed to operate.

Even if this Court agrees with LCPW that no certification is required in cases where service is already being provided, there is no evidence that LCPW was actually providing service to customers in the disputed area. Instead, LCPW presented evidence that it generally served the entire area on its side of the line as shown in the 1992 Map. As discussed above, the 1992 Map is a nullity and cannot serve as the basis for an

³ Similar to the testimony about service provided, the testimony with respect to funds and budgeting relates to LCPW's entire area and not the disputed area specifically. (R. at 321:13-23). The disputed area coincidentally lies along LCPW's supply lines, which have their terminus within Fountain Inn. (R. at 316:21-319:3; 356). Again, LCPW's argument on this point rests on the 1992 Map. LCPW spent funds to maintain a supply of natural gas to its system, but it has not identified any customers in the disputed area.

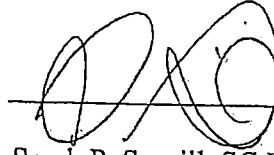
argument that service was being provided in the disputed area in the absence of evidence of actual customer contracts.

As argued by Fountain Inn in its Appellant's Brief, the case law supports its construction of the statute when the facts of each case are properly considered. Moreover, this case adds a new wrinkle to the existing case law: How does S.C. Code Ann § 5-7-60 operate when two municipalities seek to serve the same customers outside their municipal boundaries? Fountain Inn cites the rule from the statute, which allows service by contract. LCPW and the trial court look to the exception, which provides for designated service areas. However, as shown above and in Fountain Inn's Appellant's Brief, the exception is inapplicable here. As a result, both Fountain Inn and LCPW should be able to compete for customers within the disputed area.

CONCLUSION

Fountain Inn is not arguing the disputed area is its designated service area. Instead, it is arguing that the disputed area is not in anyone's designated service area, and therefore LCPW, Fountain Inn, and any other natural gas provider are free to compete for those customers under the plain language of S.C. Code Ann. § 5-7-60. For these reasons and those presented in its Appellant's Brief, the trial court's rulings should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'SP', written over a horizontal line.

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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381

Attorneys for Appellant
City of Fountain Inn, South Carolina

March 18, 2016
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

C.A. No. 2011-CP-30-0309

Commissioners of Public Works of the
City of Laurens, South Carolina, also known as the
Laurens Commission of Public Works Respondent,

v.

City of Fountain Inn, South Carolina, ...Appellant.

RECORD ON APPEAL

(Pages 1 - 373)

MCNAIR LAW FIRM
Robert L. Widener, SC Bar No. 6089
P.O. Box 11390
Columbia, SC 29211
Telephone: 803.799.9800
Facsimile: 803.753.3278

Attorneys for the Respondent
Commissioners of Public Works of the
City of Laurens, South Carolina, a/k/a
Laurens Commission of Public Works

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
City of Fountain Inn, South Carolina

INDEX

Orders

Preliminary Injunction Order	1
Order of October 17, 2013	6
Order of September 24, 2014.....	7
Order of August 13, 2015	17

Pleadings

Complaint.....	18
Answer	28
Defendant's Notice of Motion and Motion for Summary Judgment.....	37
Plaintiff's Motion for Summary Judgment	39
Defendant's Memorandum in Support of Motion for Summary Judgment.....	45
Plaintiff's Pre-Trial Brief.....	137
Defendant's Pre-Trial Brief	147
Plaintiff's Supplemental Brief	160
Defendant's Memorandum of Law	173
Plaintiff's Reply Brief.....	198
Defendant's Reply Memorandum of Law	208
Defendant's Motion to Amend	229
Plaintiff's Response in Opposition to Defendant's Motion to Alter or Amend	232

Transcripts

Transcript of Trial	236
Testimony	
Coleman F. Smoak, Jr.	
Direct	253
Cross	262
Redirect	268
Carey Ellison Ellis	
Direct	269
Cross	273
Redirect	274
Irvin Dale Satterfield	
Direct	275
Cross	289
Redirect	302
Eric Scott Heath	
Direct	303
Cross	314
Redirect	320
John Young	
Direct	320
Michael Pittman	
Direct	325
Cross	335
Redirect	338
Irvin Dale Satterfield	
Rebuttal	339
Surrebuttal	340

Trial Exhibits

Pl. Ex. 1	349
Pl. Ex. 2	352
Pl. Ex. 3	353
Pl. Ex. 4	354
Pl. Ex. 5	355
Pl. Ex. 6	356
Pl. Ex. 7	357
Pl. Ex. 8	362
Pl. Ex. 9	369
Def. Ex. 1	370
Def. Ex. 2	371
Def. Ex. 3	372
Def. Ex. 4	373

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

CA# 2011-CP-30-309

ORDER

LAURENS COUNTY

CLERK OF COURT

2011 NOV 14 P 6:16

This matter came on to be heard before me on Friday, August 5, 2011 on Plaintiff's Motion seeking a Preliminary Injunction.

Plaintiff is a duly constituted board of commissioners of public works pursuant to the laws of the State of South Carolina and, as such, acts on behalf of the City of Laurens in providing certain utility services, including, without limitation, natural gas service. Fountain Inn is a municipality corporation of the State of South Carolina located, in part, in Laurens County, South Carolina.

Plaintiff's motion seeks to prevent Defendant, during the pendency of this action, from installing natural gas lines in an area in northern Laurens County near the Owings Industrial Park it claims to be its territory. The Plaintiff alleges:

1. That it entered a contract in late 1992 whereby Plaintiff and the Defendant agreed to establish certain territories for each party. Plaintiff further contends that Defendant's attempt to provide natural gas services in this area violates the alleged contract.
2. That if no contract exists, it is entitled to enjoin Defendant's construction activities based upon the equitable doctrine of promissory estoppel.

see 115

3. That pursuant to S.C. Code § 5-7-60, the disputed area represents its "designated service area."

Defendant denies Plaintiff's contentions on all points.

I. ANALYSIS

A. BASIS FOR A PRELIMINARY INJUNCTION

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dept. of Corrections*, 709 S.E.2d 639, 642 (2011).

To obtain a preliminary injunction, Plaintiff must prove:

1. Sufficient facts to state a cause of action for an injunction;
2. That injunctive relief is reasonably necessary to preserve the rights of the parties during the pendency of the litigation;
3. That Plaintiff will suffer immediate, irreparable harm without the injunction;
4. That Plaintiff has a likelihood of success on the merits; and
5. That Plaintiff has no adequate remedy at law.

Compton v. South Carolina Dept. of Corrections, 292 S.C. 361; 709 S.E.2d 639 (2011).

B. CONTRACT CLAIM

Plaintiff alleges that a series of letters between the managers of Plaintiff's and Defendant's gas departments in 1992 constitute a contract which gave Plaintiff the disputed territory as its exclusive territory. Defendant contends that in a contemporaneous letter dated November 25, 1992, Plaintiff's gas manager claimed to be preparing a resolution that was to be adopted by "both of [the parties'] governing bodies." No evidence was produced at the hearing that either governing body adopted a resolution.

Defendant contends that neither of the parties' gas managers had the authority to bind their respective governmental agencies and that no resolution to enter into the alleged contract was adopted. In *Carolina Power & Light Co. v. Darlington County*, 315 S.C. 5; 431 S.E.2d 580 (1993) the Supreme Court determined that the Hartsville Fire Chief lacked capacity to enter into a specific contract because he had not obtained the required approval of the City's governing body and held that "[a] municipal corporation is not bound by a contract made in its name by one of its officers or by a person in its employ ... if the officer or employee had no authority to enter into such a contract in behalf of the corporation."

In accordance with *Compton*, at this time, the Court finds that there is a genuine dispute as to the existence of an enforceable contract. Therefore, the Court does not need to reach a conclusion as to whether Plaintiff is likely to succeed on the merits of its contract claim.

C. PROMISSORY ESTOPPEL

In order to recover under a theory of promissory estoppel, a claimant must demonstrate: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury in reliance on the promise. *Satcher v. Satcher*, 351 S.C. 477, 483-84 570 S.E.2d 535, 538 (Ct.App.2002). The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice. *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct.App.1988).

Craft v. South Carolina Com'n for Blind, 385 S.C. 560, 685 S.E.2d 625, (S.C.App. 2009)

The gravamen of Plaintiff's promissory estoppel claim at this time seems to be that the parties conducted themselves as if a contract existed after the 1992 letters at issue. Defendant contends, and Defendant presented evidence that tends to support its contention, that almost immediately there was some dispute concerning the territory encompassed by the alleged contract.

As with the contract claim, at this time, the Court finds that there is a genuine dispute as to the existence of an enforceable contract. Therefore, the Court does not need to reach a conclusion as to whether Plaintiff is likely to succeed on the merits of its promissory estoppel.

D. SOUTH CAROLINA CODE ANNOTATED § 5-7-60

In its Complaint, Plaintiff is claiming that it is entitled to have this Court declare that the disputed territory as its "designated service area" pursuant to South Carolina Code Annotated §5-7-60. The statute provides:

Any municipality may perform any of its functions, furnish any of its services ... in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof ... except within a designated service area for all such services of another municipality.... For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *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.

Plaintiff's governing commission adopted a resolution (Resolution 11-03) apparently to for the purpose of "certifying" that it provides natural gas service in the disputed area, that it had budgeted to provide natural gas service in that area, and that it had used Plaintiff's funds to provide natural gas service to the disputed area. Plaintiff also presented a map on which the alleged service area boundary was depicted and showing where its natural gas lines existed to support its claim that it provides the service in the disputed area.

Defendant disputes Plaintiff's contention that it has exclusively provided natural gas services in the disputed area and produced a map at the hearing for the purpose of showing that it has also constructed natural gas lines in the disputed area. Defendant argues also that there are three natural gas providers in Laurens County. Plaintiff, Clinton Newberry Natural

Gas Authority, and the City of Fountain Inn Natural Gas Department, all providing natural gas services in Laurens County.

Finally, it is not clear at this stage of the litigation whether South Carolina Code Annotated §5-7-60 applies to the unique facts of this case.

E. IRREPARABLE HARM OR DAMAGE

The real dispute appears to be whether Defendant should be allowed to provide natural gas to a new large manufacturer that is building a facility at the Owings Industrial Park. At the hearing, Plaintiff acknowledged that it had secured a contract with the manufacturer to supply its facility with natural gas. Plaintiff did not allege that there were any other substantial customers in the disputed area who would require natural gas service in the near future.

Therefore, there does not appear to be the likelihood that the Plaintiff will suffer any damage prior to this case reaching full trial.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that Plaintiff's Motion for a Preliminary injunction is denied.

It is further ordered that the effect of this Order is to deny Plaintiff's motion for a preliminary injunction. Nothing in this Order is to be construed as a finding of fact binding upon any other judge.

AND IT IS SO ORDERED.

November 10, 2011
Greenwood, South Carolina

[Signature]
Judge
8th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

ORDER

This matter came on to be heard before me at the Laurens County Court of Common Pleas, Laurens South Carolina on April 24, 2013. Plaintiff and Defendant have filed cross motions for summary judgment.

The Plaintiff was present and was represented by Bernie W. Ellis of the Greenville County Bar. The Defendant was also present and was represented by David W. Holmes of the Greenville County Bar.

After receiving exhibits and taking arguments from both parties, the Court finds that there are genuine issues of material fact that that must be decided after a trial of this case. Therefore, both motions for summary judgment are denied.

AND IT IS ORDERED.

Oct 17th, 2013
Greenwood, South Carolina
Newsberry

S/Eugene C. Griffith, Jr. Judge
Eugene C. Griffith, Jr.
8th Judicial Circuit

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

LYNN W. LANCASTER
IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS) CIVIL ACTION NO: 2011-CP-30-309

Commissioners of Public Works of the)
City of Laurens, South Carolina, also)
Known as the Laurens Commission of)
Public Works,)
Plaintiff,)
vs.)
City of Fountain Inn, South Carolina)
Defendant.)

2014 SEP 26 A. 9: 52
LAURENS COUNTY ORDER
CLERK OF COURT

This matter was tried by the Court on March 20, 2014. In this case, the City of Laurens, South Carolina (the "City of Laurens"), acting through the Laurens Commission of Public Works ("LCPW"),¹ seeks a declaratory judgment that it has established a "designated service area" outside the corporate limits of the City of Laurens pursuant to S.C. Code Ann. § 5-7-60 for furnishing natural gas, such that the City of Fountain Inn, South Carolina ("City of Fountain Inn") may not serve natural gas in that designated service area without the permission of the LCPW.

Having considered the evidence presented at trial, the arguments of counsel and the applicable law, this Court concludes that under the language of Section 5-7-60, the area that the LCPW has served, which is on the southern and eastern side of the boundary line shown on the map attached to the Complaint in this action², is the LCPW's designated service area for furnishing natural gas, and that the City of Fountain Inn may not provide natural gas service in that area without the permission of the LCPW.

¹ Under *City of Spartanburg v. Blalock*, 223 S.C. 252, 75 S.E.2d 361 (1953), the LCPW is the entity that acts for the City of Laurens in providing utility services.

² A larger copy of the map showing the boundary line is in the record of the case marked as Plaintiff's Exhibit 9.

I. Facts

The LCPW and the City of Fountain Inn sell natural gas to customers inside their respective corporate limits as well as to customers outside those limits as allowed by Section 5-7-60. At the trial of this matter, Coleman Smoak, the former general manager of the LCPW, and Carey Elliott, the former manager of the natural gas system for the City of Fountain Inn, testified that in 1992, officials from the two cities (including Mr. Smoak and Mr. Elliott) agreed to establish a boundary line in the unincorporated area between the two cities so that there would not be overlapping gas lines going into the same areas. As testified to by Scott Heath of Heath & Associates, Inc., an engineering firm that has worked with both cities' gas systems, there are financial and safety reasons for municipalities not to lay gas lines in the same area.

Thus, the parties drew a boundary line on a map, a copy of which is attached to a letter sent by Coleman Smoak to Carey Elliott dated November 11, 1992, and which is attached to the Complaint in this action (the "1992 map"). Though the boundary line was not formally ratified by the Fountain Inn City Council and the LCPW, the boundary line reflected the areas the cities were already serving. Mr. Smoak and Mr. Elliott testified that for the next several years (almost 2 decades), the boundary line on the 1992 map was observed such that the LCPW served natural gas by contract to all customers on the southern and eastern side of the boundary line (the City of Laurens side of the line), and City of Fountain Inn served customers by contract on the northern and western side of the line (the Fountain Inn side of the line). When there was some occasional overlap at the boundary line, it was because the parties had cooperated regarding which entity wanted to provide the service.

Dale Satterfield, the most recent general manager of the LCPW, and John Young, the current general manager, testified that the LCPW continues to provide natural gas service by contract throughout area on the southern and eastern side of the boundary line. Mr. Satterfield, Mr.

Young and Mr. Heath all testified that the LCPW has the necessary lines and other infrastructure in place to serve all the customers within the territory it serves, and, in fact, has excess capacity to do so.

This case arose in 2011, when a new industrial customer announced plans to construct a new manufacturing facility on the City of Laurens side of the line, and Fountain Inn decided to solicit that business in violation of the service area boundary line. The LCPW objected based upon the service areas that the parties had observed. According to the testimony of the LCPW's witnesses, as well as that of Mike Pitman, the current gas manager for City of Fountain Inn, the City of Fountain Inn took the position that it was not restricted in competing against the LCPW for customers in the area that the LCPW was already serving despite what had transpired before. Though it was unsuccessful with that prospective customer, the City of Fountain Inn continued to compete for customers in the area the LCPW believed to be LCPW's designated service area. Therefore, the LCPW brought this declaratory judgment action to determine if it has the right to exclude the City of Fountain Inn from serving customers in the area that has been served by the LCPW.³

II. The Statute

S.C. Code § 5-7-60 provides:

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina

³ In addition to its action under S.C. Code Ann. § 5-7-60, the LCPW originally sought relief under breach of contract and promissory estoppel theories, but it abandoned those causes of action and only sought relief under Section 5-7-60.

Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. *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.

Id. (Emphasis in original).

"The Home Rule Act of 1975 completely rewrote the powers of municipalities in this State. S.C. Code Ann. § 5-7-60 (1976) contains provisions both granting and delimiting the exercise of corporate functions of municipalities outside their corporate limits." *City of Newberry v. Public Service Comm'n of South Carolina*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986) (emphasis added).

In applying Section 5-7-60 in this case, the Court is aided by the following well-known rule:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007).

Hudson ex rel. Hudson v. Lancaster Convalescent Center, 407 S.C. 112, 122, 754 S.E.2d 486, 491 (2014):

Section 5-7-60 provides that a municipality may provide its services outside its corporate limits except within the designated service area of another municipality or political subdivision.

The statute defines a "designated service area" for purposes of this statute as the area "in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." Based upon the language of Section 5-7-60, the Court agrees that the area served by LCPW on the southern and eastern side of the boundary line created in 1992 is the LCPW's "designated service area" for natural gas service. The testimony at trial was undisputed that the LCPW has furnished natural gas service in this area outside its corporate limits for over two decades and has the infrastructure to provide that service on an ongoing basis. It is also noted that in addition to having exclusively served the area for over two decades, the LCPW passed a resolution certifying that the LCPW provides natural gas service in the area that it identifies as its Natural Gas Designated Service Area, and that it has budgeted to do so in accordance with Section 5-7-60. Therefore, the territory served by LCPW is a territory "in which the particular service [natural gas] is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." S.C. Code Ann. § 5-7-60. Further, in accordance with the statute, the City of Fountain Inn may not furnish natural gas in the LCPW's designated service area without the consent of the LCPW, as the governing body of the City of Laurens, for the purpose of providing natural gas. *City of Spartanburg*, 223 S.C. at 259-60, 75 S.E.2d at 364.

In reaching this conclusion, this Court notes that prior cases are consistent with this conclusion. In *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984), the South Carolina Supreme Court held that the Sewer District qualified as a "designated service area" under S.C. Code Ann. § 5-7-60 based upon the Sewer District's affidavit stating that the Sewer District had constructed sanitary sewerage collection lines, transmission lines and treatment facilities to handle the waste water generated by the users of the sewerage system located within the Sewer District. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261. Thus, the Sewer District could limit the City of Spartanburg from providing a competing

service in the same area. *Id.* In that case, the fact that the Sewer District had the facilities in place to provide service to that area qualified it as the Sewer District's "designated service area."

In *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990), the Cities of Hartsville and Darlington were providing fire protection services by contract in a five-mile radius outside their corporate limits under § 5-7-60. *Id.* at 42-43, 393 S.E.2d at 377-78. Darlington County passed an ordinance creating a fire district under S.C. Code Ann. § 4-19-10 to include all unincorporated areas of Darlington County. *Id.* at 42, 393 S.E.2d at 377. The Cities of Hartsville and Darlington sued to prevent the fire district from providing fire protection service where the cities were already providing it, which included an area outside the corporate limits of those cities. *Id.* In that case, the cities relied on § 4-19-10(b) which provides, in pertinent part, that a fire district may not include within its service area:

those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of the fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.

Kilgo, 302 S.C. at 43, 393 S.E.2d at 378 (emphasis added).

The Supreme Court held that § 4-19-10(b) and § 5-7-60 are not in conflict and that § 4-19-10(b) "protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in absence of an agreement, newly created county fire districts must exclude areas served by cities under contract." *Id.* That service area was defined to be the 5-mile radius around the City of Darlington and the City of Hartsville in which the Cities provided fire protection services. *Id.*

There is a distinction between *Kilgo* and the case at bar — namely that there was an additional statute providing that a service area is an area in which a service is being provided. However, the language in Section 4-19-10(b) is materially the same as the pertinent language in

Section 5-7-60. What is important about *Kilgo* to this case is that under the language of Section 5-7-60 and the parallel language in Section 4-19-10(b) regarding a service area, the cities had the right to control the provision of a service outside the cities' corporate limits where the cities were already providing that service by contract, and the only requirement for designating that area was that the municipality was serving it. As pointed out in the dissent in *Kilgo*, that area included the entire area in which the service was made available by contract and not just to the customers with whom the cities had existing contracts. *Id.* at 45-49, 393 S.E.2d at 379-382.

Similarly in *Mathis v. Hair*, 358 S.C. 48, 594 S.E.2d 851 (2002), the Court of Appeals defined the meaning of a "service area" for purposes of S.C. Code Ann. § 23-9-420. *Id.* at 852. In doing so, the Court noted that the language in Section 23-9-420 is similar to the language used in Section 5-7-60 and that "service area" is defined by the statute to mean an area in which the service is being provided. *Id.* at 53, 594 S.E.2d at 854.

In this case, there is a specific service area outside the City of Laurens in which the LCPW has provided natural gas service for decades. Just as in *Spartanburg Sanitary Sewer District*, it was established in this case by the testimony of Coleman Smoak, Dale Satterfield and Scott Heath that the LCPW has had the facilities in place to provide natural gas service throughout the designated service area since before 1992, and, in fact has excess capacity. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261.

Similar to the facts in *City of Darlington v. Kilgo*, the testimony of Coleman Smoak, Carey Elliott, Dale Satterfield and Scott Heath, showed that this area has been served exclusively by the LCPW and that the LCPW has had and still has contracts throughout the service area since before 1992. See *Kilgo*, 302 S.C. at 43, 393 S.E.2d at 378 (noting that the service area was established by the actual provision of services). The City of Fountain Inn did not seek to serve that area until shortly before this action was filed, and any crossover by the City of Fountain Inn into the LCPW's

designated service area was minimal and based upon permission given by the LCPW. Therefore, under the reasoning in *Kilgo*, the entire area in which the LCPW provides service by contract is its designated service area. *Id.* (“[T]his Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a “service area.”)

The City of Fountain Inn’s policy arguments do not change the analysis because the statute is clear. For example, the City of Fountain Inn introduced the fact that it is considerably closer to Owings Industrial Park, which is located within the LCPW’s designated service area, than is the City of Laurens, and, therefore, the City of Fountain Inn should be able to serve Owings Industrial Park. Nothing in Section 5-7-60 makes the extent of the service area a relevant inquiry. In *Spartanburg Sanitary Sewer District*, the Supreme Court rejected an argument by the City of Spartanburg that it could serve a specific area more economically than the Sewer District. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72-73, 321 S.E.2d at 261. While the Supreme Court’s conclusion as to that point is not expressly based upon its earlier finding that the Sewer District constituted a designated service area under Section 5-7-60, the Court noted that nothing in the Act creating the Sewer District indicated an intent to allow the City to serve areas in the District because the City could more conveniently do so. *Id.* The same is true here.

The City of Fountain Inn also introduced evidence that it competes with Piedmont Natural Gas for gas service, and, therefore, there can be two competing natural gas providers in an area. Piedmont Natural Gas, however, is not a municipality. It is investor owned and is regulated by the Public Service Commission. Therefore, under *Glendale Water Corporation of Florence, Inc. v. City of Florence*, 274 S.C. 472, 265 S.E.2d 41 (1980), the City of Fountain Inn can extend its lines into areas served by a private utility. Because the LCPW is a municipal provider, the City of Fountain Inn cannot extend into the LCPW’s designated service area without the LCPW’s permission.

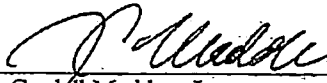
The City of Fountain Inn pointed out that Resolution No. 11-03, certifying that the LCPW currently serves the area the subject of this lawsuit, has budgeted to serve the area, and has applied funds of the Combined Utility System to serve the area was adopted just as this lawsuit was being filed. The adoption of that resolution, however, only certified a state of affairs that has existed with the knowledge and acquiescence of the City of Fountain Inn for decades—that the LCPW is acting as the only provider of natural gas service in the area. Under the statute, *Spartanburg Sanitary Sewer District and Kilgo*, providing the particular service in question is enough to establish a designated service area.

There are other issues such as an argument in favor of the benefits of competition, but competition in providing natural gas service is not a free-for-all. Even investor owned utilities are under the authority of the Public Service Commission. S.C. Code Ann. § 58-5-210, *et seq.*, and, must obtain a certificate to provide service. S.C. Code Ann. Regs. 103-404 (2008). Second, there are legitimate and important policy reasons to limit particular services to one municipal provider, such as safety concerns and incentives for municipalities to provide the service. However, the most important point is that the legislature drafted a clear and unambiguous statute to reflect legislative policy which does not permit a municipality to provide a service in an area already being served by another municipality without the other municipality's consent.

III. Conclusion

The LCPW has complied with the requirements to establish the territory on the southern and eastern side of the boundary line on the 1992 map as the LCPW's designated service area for a particular service, natural gas, under S.C. Code Ann. § 5-7-60. Therefore, the City of Fountain Inn may not provide natural gas service in that area without the consent of the LCPW.

IT IS SO ORDERED.


J. Cordell Maddox, Jr.
Judge of the Circuit Court

Anderson, South Carolina

9/24/, 2014

RECEIVED



SEP 26 2014

MEB:MS-432

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

Commissioners of Public Works
of the City of Laurens, South
Carolina, a/k/a Laurens Commission
of Public Works ,)

Plaintiff,)

v.)

City of Fountain Inn, South
Carolina,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011CP-30-309

ORDER DENYING MOTION TO
AMEND JUDGMENT

LAURENS COUNTY
CLERK OF COURT

2015 AUG 19 A 11:41

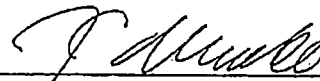
LYNN W. LANCASTER

This matter is before the Court on Defendant's *Motion to Amend Judgment*. After careful consideration, Defendant's motion is denied.

This Court further finds that oral arguments would not aid the court in making a determination in this matter.

It is hereby ordered that Defendant's Motion to Amend Judgment is denied.

IT IS SO ORDERED.

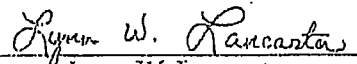


The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court

Anderson, South Carolina

August 13, 2015

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) CIVIL ACTION NO:

Commissioners of Public Works
of the City of Laurens, South
Carolina, also known as the
Laurens Commission of Public
Works,
Plaintiff,
vs.
City of Fountain Inn, South
Carolina,
Defendant.

COMPLAINT

(Declaratory Judgment, Injunction)
(Non-Jury)

2011 CP 30309
2011 MAR 30
2:43
LAURENS COUNTY
CLERK OF COURT
KIM W. LANCASTER

Nature of the Action

This is an action to determine whether the City of Fountain Inn, South Carolina ("Fountain Inn") has the right to provide natural gas service to customers within a service area for which the City of Laurens, South Carolina ("City of Laurens"), through the Laurens Commission of Public Works ("LCPW"), has exclusively provided such service pursuant to statutory authority and a long-standing written agreement between LCPW and Fountain Inn. This action further seeks an injunction prohibiting Fountain Inn from providing such services.

Jurisdiction

1. LCPW is a duly constituted board of commissioners of public works pursuant to the laws of the State of South Carolina and, as such, acts on behalf of the City of Laurens in providing certain utility services, including, without limitation, natural gas service.
2. Fountain Inn is an incorporated municipality of the State of South Carolina located, in part, in Laurens County, South Carolina.

3. This matter involves the interpretation and application of the laws of the State of South Carolina.

4. Based upon the foregoing, this Court has jurisdiction over the subject matter and the parties to this action, and venue is proper in this Court.

Facts

5. LCPW and Fountain Inn both operate facilities for the provision of natural gas services to residential, commercial and industrial customers.

6. In 1992, consistent with S.C. Code Ann. § 5-7-60, LCPW and Fountain Inn entered into an agreement (the "Agreement") establishing a service area boundary between LCPW and Fountain Inn for the provision of natural gas services such that Fountain Inn would not attempt to serve customers within the service area that Fountain Inn had agreed would be served by LCPW ("LCPW's Service Area"), and LCPW, in turn, would not attempt to serve customers within the service area that LCPW had agreed would be served by Fountain Inn ("Fountain Inn's Service Area"). A copy of the documents memorializing the Agreement are attached as Exhibit A.

7. Since 1992, both LCPW and Fountain Inn have complied with the Agreement by respecting that service area boundary, including, without limitation, LCPW's having relinquished the opportunity to serve commercial and industrial customers it could have served within Fountain Inn's Service Area.

8. Fountain Inn has now asserted that it has the right to submit a proposal for the provision of natural gas service within LCPW's Service Area, and, upon information and belief, has submitted a proposal to provide such service to a specific industrial customer within LCPW's Service Area.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment - Breach of Contract)

9. The foregoing paragraphs of this complaint are incorporated herein to the extent not inconsistent herewith.

10. LCPW and Fountain Inn entered into a contract whereby, in consideration of Fountain Inn's agreement not to provide natural gas services in LCPW's Service Area, LCPW agreed not to provide such services in Fountain Inn's Service Area. The writing agreed upon by the parties established the areas in which the parties agreed not to provide natural gas services.

11. Fountain Inn asserts that no valid contract was entered into and has submitted a proposal to provide services in LCPW's Service Area.

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

13. LCPW prays for a declaratory judgment that LCPW and Fountain Inn entered into a valid and enforceable contract and that Fountain Inn's proposal to provide services in violation of the Agreement constitutes a breach of contract.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment - S.C. Code Ann. § 5-7-60)

14. The foregoing paragraphs of this complaint are incorporated herein to the extent not inconsistent herewith.

15. LCPW asserts that pursuant to S.C. Code Ann. § 5-7-60, Fountain Inn, as a municipality, only has the right to serve customers within a designated service area of another municipality or political subdivision with the approval of the governing body of the other municipality or political subdivision concerned.

16. Pursuant to the law as set forth in *City of Spartanburg v. Blalock*, 75 S.E.2d 361 (S.C. 1953), the entity that provides various utility services for the municipality of Laurens is the City of Laurens, and the LCPW is the body which operates and has full control and management of those services.

17. Pursuant to section 5-7-60, a "designated service area" is an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.

18. Based upon the Agreement between LCPW and Fountain Inn and the parties' long acquiescence in the Agreement, LCPW's Service Area is a designated service area of the City of Laurens in which Fountain Inn may not provide service without approval of the LCPW, or in the alternative, the City of Laurens, neither of which Fountain Inn has obtained.

19. Therefore, LCPW seeks a declaratory judgment that Fountain Inn may not provide natural gas service within LCPW's Service Area.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

20. The foregoing paragraphs of this complaint, to the extent not inconsistent herewith, are incorporated herein.

21. In the Agreement, Fountain Inn made a promise intended to be relied upon by LCPW as to the area in which LCPW could provide natural gas service without interference from Fountain Inn.

22. LCPW has relied to its detriment on the promise of Fountain Inn set forth in the Agreement as to the service areas agreed to by the parties, including but not limited to:

- a. Investing funds in facilities in reliance on the ability to serve LCPW's Service Area without interference from Fountain Inn.

b. Relying upon the availability and receipt of monies earned from providing natural gas service in LCPW's Service Area to pay amounts owed on outstanding utility system revenue bonds.

c. Refraining from providing service within Fountain Inn's Service Area.

23. Refusal to enforce the promise as to the service areas made by Fountain Inn as set forth in the Agreement would result in an injustice.

24. Therefore, in the event that this Court finds that the Agreement is not enforceable as a contract, LCPW seeks a judgment that Fountain Inn is estopped from providing natural gas services in LCPW's Service Area.

FOR A FOURTH CAUSE OF ACTION
(Injunction)

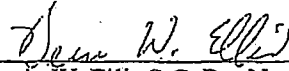
25. The foregoing paragraphs of this complaint, to the extent not inconsistent herewith, are incorporated herein.

26. Fountain Inn's provision of natural gas services to customers within LCPW's Service Area will result in irreparable injury to LCPW which will leave LCPW without an adequate remedy at law because LCPW's ability to budget and plan for the provision of natural gas service will be severely impacted if it does not have a defined service area.

27. Wherefore, LCPW seeks an injunction against Fountain Inn's undertaking to provide such services in LCPW's Service Area.

WHEREFORE, having fully set forth its complaint, LCPW prays for declaratory, equitable, and injunctive relief as set forth herein, for the costs of this action, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,



Bernie W. Ellis S.C. Bar No. 64841
McNair Law Firm, P.A.
Post Office Box 447
Greenville, South Carolina 29602
Tel. (864) 271-4940
Fax (864) 271-4015
bellis@mcnair.net

Donald B. Hocker, S.C. Bar No. 2535
P.O. Box 972
Laurens, South Carolina 29360
Tel. (864) 984-4574
Fax (864) 984-0114
dbhattorney@backroads.net

Attorneys for Plaintiff

Greenville, South Carolina
March 30, 2011

Exhibit A



212 CHURCH STREET
POST OFFICE BOX 349
LAURENS, SOUTH CAROLINA 29350-0349

(803) 694-0491
FAX (803) 664-5355

COMMISSIONERS
MARSHALL W. ABERCROMBIE
ULYSSES CUNNINGHAM
THOMAS K. HARDY
GARY P. MOORE
WILLIE B. PADEN

November 11, 1992

Mr. Carey Elliott
Town of Fountain Inn
200 North Main Street
Fountain Inn, South Carolina 29644

Re: Territorial Boundary

Dear Mr. Elliott:

Enclosed is a map on which I have located the proposed location of the territorial boundary between our gas systems. I believe that it reflects our conversation and discussion which was held in this office on October 27, 1992.

I look forward to your comments.

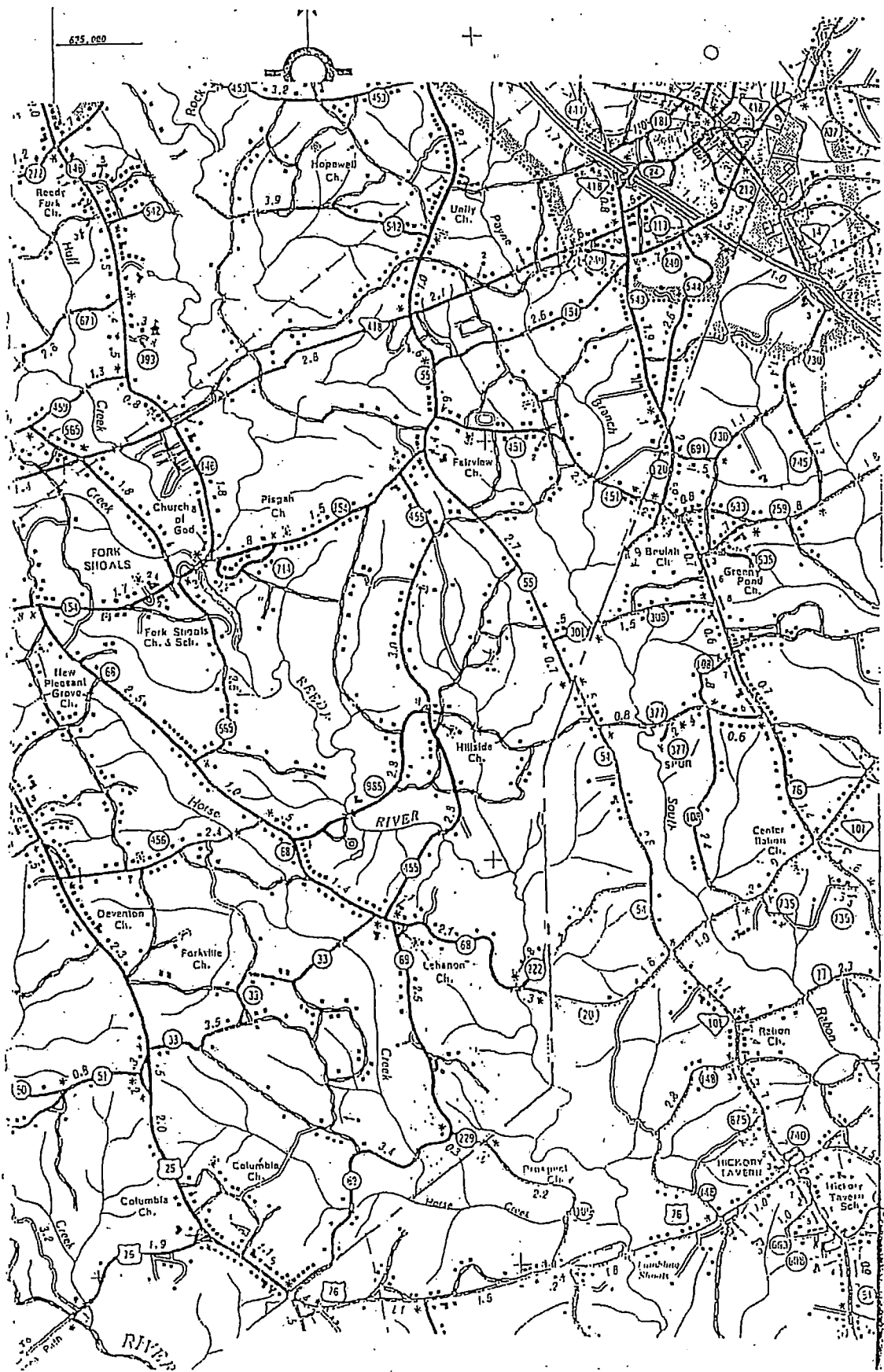
Sincerely,

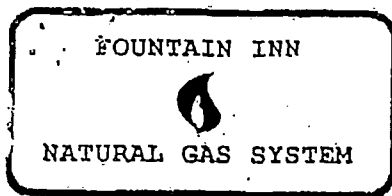
Coleman F. Smoak, Jr.
General Manager

CFSjr/jhj

Enclosure

cc: Mr. Scott Heath, w/enc.





Fountain Inn Natural Gas System

November 17, 1992

Carey E. Elliott, Systems Manager

A.W. Moore, Superintendent

Deborah M. Jacobson, Accounts Supervisor

Mr. Coleman F. Smoak, Jr.
General Manager
Commission of Public Works
P.O. Box 349
Laurens, SC 29360-0349

Re: Territorial Boundary for Natural Gas Systems

Dear Coleman:

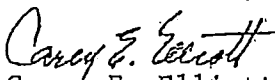
This letter is in reply to our meeting of October 27, 1992, regarding the establishment of territorial boundary for our natural gas systems.

The boundary map mailed to us on November 11, 1992, does reflect our previous conversation and is in agreement with the Fountain Inn City Council.

However, as discussed, the Fountain Inn Natural Gas System expects the privilege of serving customers within our city limits. This includes future areas of annexation.

Thank you for your spirit of cooperation in this matter.

Sincerely,


Carey E. Elliott
System Manager

CEE/krc

xc: Mayor Ben Davis
Sam Moore
Berry Woods, Jr.

200 North Main Street • Fountain Inn, S.C. 29644

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

CA# 2011-CP-30-309

2011 MAY -2 P 3:10

LAURENS COUNTY
CLERK OF COURT

ANSWER

The Defendant, answering Plaintiff's Complaint, would respectfully show unto
the Court the following:

I. FOR A FIRST DEFENSE

1. All allegations of the Complaint not specifically hereinafter admitted,
modified or explained are denied and strict proof is demanded thereof.
2. Defendant admits the allegations of Paragraphs 1 through 5 of Plaintiff's
Complaint upon information and belief.
3. Defendant strenuously denies the allegations of Paragraphs 6 through 27
and demands strict proof thereof. Defendant alleges that there is no "territorial
boundary" or "service area" contract with Plaintiff and Defendant has the right to
provide natural gas services to and including, but not limited to, ZF Transmissions
Greenville, LLC.

II. FOR A SECOND DEFENSE

4. The Defendant, further answering the Plaintiff's Complaint reiterates all
of the allegations of the previous defenses above as if fully repeated herein.

5. The Plaintiff has failed to set forth facts sufficient to state a cause of action and therefore, the Complaint should be dismissed, and with costs.

**III. FOR A THIRD DEFENSE
NO RESOLUTION ADOPTED**

6. The Defendant, further answering the Plaintiff's Complaint reiterates all of the allegations of the previous defenses above as if fully repeated herein.

7. Defendant alleges that its gas manager was without authority to enter into any binding contract with Plaintiff.

8. Defendant alleges that Plaintiff's gas manager was without authority to enter into any binding contract with Defendant.

9. Neither Plaintiff's Commission nor Defendant's Council ratified or otherwise approved any agreement.

10. Plaintiff's agent knew that both the Plaintiff's Commission and Defendant's Council would have to vote to approve or ratify any agreement as shown on Exhibit A attached hereto and made a part hereof by reference.

11. Defendant has demanded that Plaintiff produce any resolution or ratification by Plaintiff's Commission approving or adopting any alleged agreement and Plaintiff claims that no such resolution or ratification exists.

12. Therefore, there is no contract; none was approved or ratified by the governing body of either Plaintiff or Defendant which Plaintiff knew when it filed the current litigation.

13. Plaintiff's complaint should therefore be dismissed, and with costs.

**IV. FOR A FOURTH DEFENSE
ULTRA VIRES/LACK OF AUTHORITY**

14. The Defendant, further answering the Plaintiff's Complaint, reiterates all of the allegations of the previous defenses above as if fully repeated herein.

15. Authority to enter contracts, including, but not limited to, contracts that purport to limit the service area of the Defendant's natural gas system lies solely with the elected City Council.

16. No manager, director or officer employed with Defendant has such authority.

17. Defendant is informed and believes that the authority to enter contracts, including, but not limited to, contracts that purport to limit the service area of the Plaintiff's natural gas system lies solely with Plaintiff's Commission.

18. Unless and until the governing body of both Plaintiff and Defendant voted in public session in accordance with the requirements of South Carolina law, no contract as Plaintiff alleges was reached.

19. Defendant strictly denies that its City Council voted, in public session, to enter into any contract with Plaintiff to limit its service area.

**V. FOR A FIFTH DEFENSE
NO MEETING OF THE MINDS**

20. The Defendant, further answering the Plaintiff's Complaint, reiterates all of the allegations of the previous defenses above as if fully repeated herein.

21. Defendant alleges that there was no meeting of the minds.

VI. FOR A SIXTH DEFENSE
NO CONSIDERATION

22. The Defendant, further answering the Plaintiff's Complaint, reiterates all of the allegations of the previous defenses above as if fully repeated herein.

23. Defendant alleges that the "contract" as alleged by plaintiff is not supported by any consideration.

VII. FOR A SEVENTH DEFENSE
ILLEGALITY

24. The Defendant, further answering the Plaintiff's Complaint, reiterates all of the allegations of the previous defenses above as if fully repeated herein.

25. Plaintiff has been unable to produce any resolution or ratification of the alleged "contract" by its Commission voted upon in public session as required by South Carolina Code Ann. §30-4-10 *et. seq.*

26. While Defendant denies that any contract exists, any alleged contract is therefore void.

VIII. FOR AN EIGHTH DEFENSE
UNCLEAN HANDS

27. The Defendant, further answering the Plaintiff's Complaint, reiterates all of the allegations of the previous defenses above as if fully repeated herein.

28. Both Plaintiff and Defendant have submitted bids to ZF Transmissions Greenville, LLC ("ZF") that is located in northern Laurens County in close proximity to Defendant.

29. Defendant is informed and believes that Plaintiff has had correspondence and communications with ZF to the effect that Plaintiff has a designated "service area" and that the ZF facility is located in the service area.

30. Plaintiff has communicated to ZF and/or its agents or persons responsible for making a decision on the purchase of natural gas for ZF that Defendant is prohibited from providing natural gas to ZF.

31. Defendant is informed and believes that Plaintiff's communications have been made with the purpose and intent to delay ZF's decision on Defendant's bid and to convince ZF to enter a contract with Plaintiff and not Defendant.

32. Defendant is informed and believes that Plaintiff corresponded with ZF and/or ZF's agents and provided a copy of this lawsuit in a further attempt to bolster its claim that it has an assigned "service area" and that ZF is located in that area.

33. Plaintiff is well aware of the legal obligation to have obtained approval of any alleged territorial agreement by the public vote of its governing body, which did not happen.

34. Plaintiff is also well aware that in later years, there have been communications between the parties about "breaches" of the alleged agreement and discussion of terms that are not incorporated into any documents that was assented to by either of the governing bodies.

35. Neither Plaintiff nor Defendant are regulated by the South Carolina Public Service Commission and therefore, there are no "assigned service areas" binding upon Plaintiff or Defendant.

36. Defendant is further informed and believes that such correspondence served no purpose whatsoever other than Plaintiff's attempt to delay ZF's decision on Defendant's bid and to convince ZF to enter a contract with Plaintiff and not Defendant.

37. Defendant is informed and believes that it can provide natural gas to ZF at a rate lower than Plaintiff and that Plaintiff is aware of that.

38. Defendant is informed and believes that Plaintiff knows that unless it can convince ZF that Plaintiff has an "exclusive" territory and that Defendant is legally unable to provide natural gas, ZF will decide to contract with Defendant.

39. Defendant has had communications with ZF to the effect that ZF knows that Defendant is interested in providing natural gas to ZF; that ZF is considering Defendant's bid; but that ZF is concerned about the litigation and has expressed the sentiment that the matter be resolved between Plaintiff and Defendant.

40. Defendant is further informed and believes that the quantity of natural gas to be supplied to ZF is significant.

41. In addition, if there were an agreed upon service area, which Defendant strictly denies, Plaintiff has repeatedly violated it by providing natural gas to customers that are in the area Plaintiff alleges is exclusively Defendant's territory.

42. Defendant is informed and believes that the institution and prosecution of this lawsuit is not in good faith, but is simply another tactic by Plaintiff to convince ZF to enter into a contract with Plaintiff.

43. Therefore, Defendant is informed and believes that Plaintiff has unclean hands and should be denied all relief.

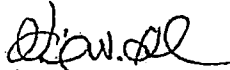
**IX. FOR A NINTH DEFENSE
BREACH OF CONTRACT**

44. The Defendant, further answering the Plaintiff's Complaint, reiterates all of the allegations of the previous defenses above as if fully repeated herein.

45. Defendant is informed and believes that if a contract exists, which Defendant strictly denies, Plaintiff is in material breach of that contract.

WHEREFORE, the Defendant, having fully answered, prays as follows:

1. That the Plaintiff's Complaint be dismissed, and with costs; and
2. For such other and further relief as to this Court seems just and proper.



David W. Holmes,
SC Bar Number: 2577

HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: (864) 271-2381
Facsimile: (864) 271-7994
ATTORNEY FOR DEFENDANT
CITY OF FOUNTAIN INN

April 29, 2011
Greenville, South Carolina

WMW LANCASTER

2011 MAY -2 P 3:10

WILMINGTON COUNTY
CLERK OF COURT

EXHIBIT A



12 CHURCH STREET
POST OFFICE BOX 349
LAURENS, SOUTH CAROLINA 29350-0349

(803) 884-0451
FX (803) 884-6358

COMMISSIONERS
MARSHALL W. ADERCRUMBIE
LYBBEE CUNNINGHAM
THOMAS K. HARDY
ARYN M. MOORE
ILLIEB. PADEN

November 25, 1992

Mr. Carey E. Elliott
Fountain Inn Natural Gas System
200 N. Main St.
Fountain Inn, South Carolina 29644

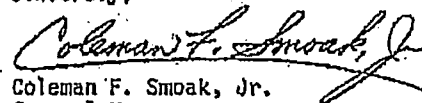
Re: Territorial Boundary for
Natural Gas

Dear Mr. Elliott:

I am pleased to learn that the map I sent on October 27, 1992, reflects your understanding of the referenced boundary. I am in the process of preparing a resolution for adoption by both of our governing bodies.

While I recognize the need to serve city services within city limits, I would appreciate your thoughts with regard to our existing customers which may be annexed.

Sincerely,


Coleman F. Smoak, Jr.
General Manager

CFSjr:jj

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

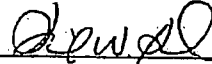
**NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT**

**TO: COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF LAURENS,
SOUTH CAROLINA, PLAINTIFF, AND ITS ATTORNEYS, BERNIE W. ELLIS
AND DONALD B. HOCKER;**

YOU WILL PLEASE TAKE NOTICE that the Defendant, the City of Fountain Inn, South Carolina (hereinafter "Defendant"), by and through its undersigned attorney, will move before a Judge for the Eighth Judicial Circuit, at chambers, at the Laurens County Courthouse in Laurens, South Carolina, on the 10th day after the service hereof or as soon thereafter as counsel may be heard, for an Order granting summary judgment to the Defendant on all causes of action set forth in the Plaintiff's Complaint pursuant to Rule 56, SCRPC.

The ground for Defendant's motion is that there is no genuine issue as to any material fact such that Defendant is entitled to judgment as a matter of law on all causes of action.

This motion is based upon the pleadings, exhibits, responses to discovery and depositions taken in this matter and such affidavits as may be submitted hereinafter.



David W. Holmes,
SC Bar Number: 2577

HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: (864) 271-2381
Facsimile: (864) 271-7994
ATTORNEY FOR DEFENDANT
CITY OF FOUNTAIN INN

October 31, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	CIVIL ACTION NO: 2011-CP-30-309

Commissioners of Public Works	)	
of the City of Laurens, South	)	
Carolina, also known as the	)	
Laurens Commission of Public	)	PLAINTIFF'S MOTION FOR
Works,	)	SUMMARY JUDGMENT
Plaintiff,	)	
vs,	)	
	)	
City of Fountain Inn, South	)	
Carolina,	)	
Defendant.	)	

Plaintiff, Laurens Commission of Public Works ("LCPW"), hereby moves for summary judgment in this action. The ground for this motion is that S.C. Code Ann. § 5-7-60 allows a municipality to provide services outside its corporate limits except within the designated service area of another municipality unless the permission of the other municipality is obtained. Under that statute, a "designated service area" is an area in which the particular service at issue is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.

In this case, the LCPW has been providing natural gas service in a particular area of Laurens County for many years based upon what LCPW believed was an agreement with the City of Fountain Inn. Based upon the language of Section 5-7-60, the LCPW believes that that area is its designated service area. The City of Fountain Inn disagrees and has begun competing with LCPW for business in the disputed area over the objection of LCPW.

There is no genuine issue as to whether LCPW has been providing natural gas service in the area it claims as its designated service area, and there is no genuine issue that the City of

GREENVILLE 303165v1

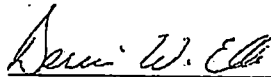
Fountain Inn has begun providing service in that same area over the objection of LCPW. Therefore, LCPW respectfully asks this Court to grant summary judgment in favor of LCPW and issue its order holding that the area in which LCPW has been providing service is its designated service area and that the City of Fountain Inn may not seek to provide service in that area without the permission of LCPW.

This motion is supported by the affidavit of Irvin D. Satterfield, the pleadings and depositions taken in this case.

WHEREFORE, Plaintiff prays that summary judgment be granted in its favor.

Respectfully submitted,

MCNAIR LAW FIRM, P.A.
Bernie W. Ellis
SC Bar No. 64841
Post Office Box 447
Greenville, South Carolina 29602
Tel. (864) 271-4940
Fax (864) 271-4015
bellis@mcnair.net



Bernie W. Ellis
Attorney for the Plaintiff.

Greenville, South Carolina
November 2, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-30-309

Commissioners of Public Works)
of the City of Laurens, South)
Carolina, also known as the)
Laurens Commission of Public)
Works,)

Plaintiff,)

vs.)

City of Fountain Inn, South)
Carolina,)

Defendant.)

AFFIDAVIT OF IRVIN D. SATTERFIELD

Personally appeared before me Irvin D. Satterfield who, first being duly sworn, deposes and states as follows:

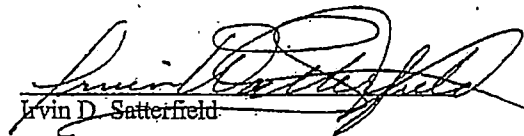
1. I am the General Manager of the Laurens Commission of Public Works ("LCPW"), and I have personal knowledge of the matters set forth herein.

2. Attached hereto as Exhibit A is a map showing the area in which LCPW has provided natural gas since before 1992. LCPW has provided natural gas service on the side of the boundary line nearest to the City of Laurens (the southern and eastern side of the boundary line) shown on Exhibit A. LCPW has the necessary distribution lines and personnel and more than sufficient capacity to provide natural gas service throughout the area served by LCPW shown on Exhibit A, and has actually provided service to any customers throughout that area who have requested it.

3. To the best of my knowledge, information and belief, prior to 2011, no other municipality or investor-owned utility has tried to compete in providing natural gas service in the area served by LCPW shown on Exhibit A. Until the City of Fountain Inn sought to compete in

the area served by the LCPW, the City of Fountain Inn, LCPW and Clinton Newberry Natural Gas Authority have respected each other's service areas.

FURTHER AFFIANT SAYETH NOT.

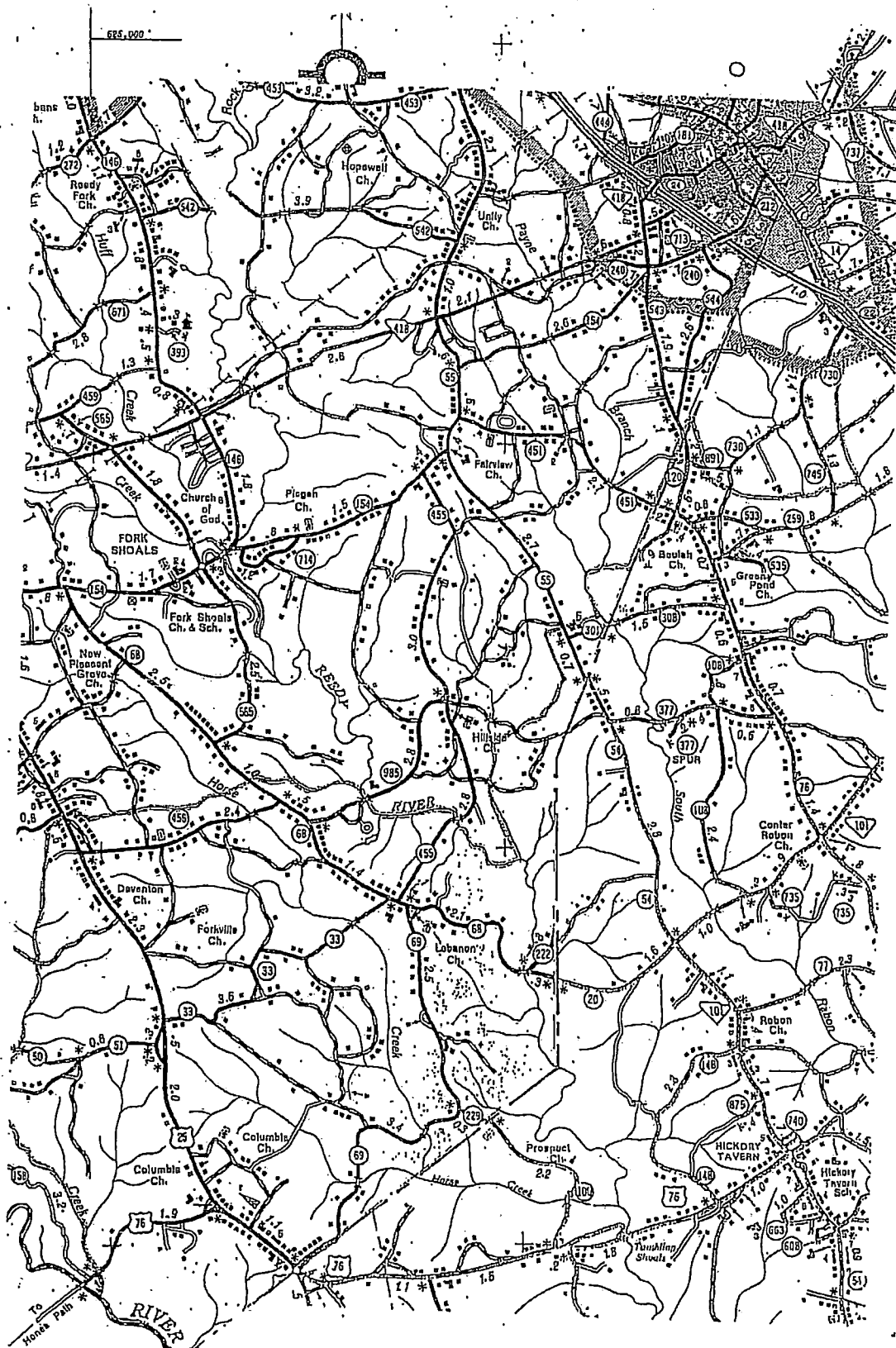

Irvin D. Satterfield

Sworn to and subscribed before me
This 26th day of October, 2012


Notary Public for the State of South Carolina

My commission expires Sept. 30, 2018

Exhibit A



STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

**MEMORANDUM OF LAW IN
SUPPORT OF THE CITY OF
FOUNTAIN INN'S MOTION FOR
SUMMARY JUDGMENT**

The Defendant, the City of Fountain Inn ("City") would respectfully submit the following Memorandum of Law in support of its Motion for Summary Judgment.

I. INTRODUCTION

The City of Fountain Inn is a municipal corporation. It owns and operates a natural gas system that provides natural gas to customers both inside and outside the City limits of the City of Fountain Inn.

The Plaintiff, the Laurens Commission of Public Works ("LCPW") also operates a natural gas system. LCPW is a municipal entity. LCPW cannot issue bonded indebtedness without the approval of the City Council of the City of Laurens. LCPW also provides water, sewer and electricity, but does so primarily for the City of Laurens.

LCPW claims that "it has the right to provide natural gas service to customers within a service area for which the City of Laurens, South Carolina through the Laurens Commission of Public Works has exclusively provided such service pursuant to its statutory authority and a long standing *written agreement*." [Emphasis added](Complaint, Page 1)

LCPW alleges, in Paragraph 1, that LCPW "is a duly authorized and constituted board of commissioners of public works pursuant to the laws of the state of South Carolina and, as such, acts on *behalf of the City of Laurens* in providing certain services including natural gas service." [Emphasis added]

LCPW filed suit against the City alleging that it entered a contract in late 1992 whereby LCPW and the City agreed to establish certain territories for each party. Fountain Inn denies that any such agreement exists.

LCPW has alleged three causes of action:

- Breach of contract;
- Declaratory judgment; and
- Promissory estoppel.

Finally, LCPW seeks injunctive relief which, of course, hinges on its success on its main claims. The City has moved for summary judgment on all causes of action.

II. BREACH OF CONTRACT

A. No meeting of the minds.

LCPW relies on a series of letters from 1992 between the managers of Plaintiff's and Defendant's gas departments. As is argued herein, there simply is no contract and there can be no serious argument that there is.

LCPW claims that it had a territorial boundary agreement with Fountain Inn as far back as 1977. (Tab 1, Smoak, Page 14, Line 15) This alleged agreement could have predated 1977; Mr. Smoak was hired by LCPW in 1977 and he claimed it was in place when he was hired.

Later, in early 1985, LCPW approached Fountain Inn to discuss a boundary agreement because LCPW was "about to install a new feeder line, a 10-inch natural gas line that would run from [its] tap with Transco, which is up north of Fountain Inn, and run all the way to the City of

Laurens." (Tab 1, Smoak, Page 10, Line 1) Smoak contended that this new line "was necessary to give [LCPW] a second feeder from Transco...." (Tab 1, Smoak, Page 11, Line 3) When asked if any written agreement was reached, he stated: "If there were, I don't remember." (Tab 1, Smoak, Page 11, Line 14)

We now arrive in October of 1992 and LCPW again invited Fountain Inn to a meeting at LCPW to discuss a territorial boundary. When asked why it was necessary to have a meeting if a boundary agreement had been reached in 1977 (or before) and early 1985, Coleman Smoak, LCPW'S former General Manager, responded: "Well, by the time we got from '85 to 1992, we were both actively involved in expanding the systems so that it looked like the systems were going to abut. We may be looking for potential customers in the same area." (Tab 1, Smoak, Page 13, Line 19) When pressed why there needed to be additional agreements about a boundary, Smoak said that they needed to "for lack of a better way to say it, nail down where the boundary was going to be" (Tab 1, Smoak, Page 13, Line 15)

The result of the October 1992 meeting was that Smoak wrote a letter dated November 11, 1992 to Fountain Inn and attached a map on which he had indicated a boundary. (Tab 2) On November 17, 1992, Carey Elliott, the Fountain Inn Natural Gas System Manager responded in a letter that indicated that the boundary map was what had been discussed. (Tab 3) It even stated that it was "in agreement with the Fountain Inn City Council." But the letter also raised an important issue that had not been agreed upon. Mr. Elliott raised the issue of how future annexations might be handled. This is a clear indication that no agreement had been "nailed down."

As will be discussed in more detail later, almost immediately there were claims that the so called boundary agreement had been violated. Indeed, Smoak admitted that at the time he

drew a line on a map, LCPW had customers on Fountain Inn's side of the line that LCPW didn't intend to give up.

B. Lack of required adoption of the agreement by the governing bodies.

LCPW was very well aware that no agreement had been reached in the legal sense. The letter LCPW omits from its complaint is a letter from Coleman Smoak dated November 25, 1992 (Tab 4) Significantly, Mr. Smoak states: "I am in the process of preparing a resolution for adoption by both our governing bodies." Further, Mr. Smoak acknowledged that there are details still to be resolved and stated, "While I recognize the need to serve city services within city limits, I would appreciate your thoughts with regard to existing customers which may be annexed."

Even though LCPW knew that a resolution or some public vote was required to formalize any territorial agreement, no resolution was prepared and *neither* the LCPW Commission nor the Fountain Inn City Council voted or even discussed a territorial boundary. (Tab 1, Smoak, Page 19, Line 8) (Tab 5, Satterfield, Page 12, Line 11) (Tab 6, Affidavit of Edward C. Case, Paragraphs 3-5) Even though Mr. Smoak contended several times during his deposition that he had discussed the territorial agreement with the Commission, he admitted that there are no minutes of any Commission meeting that reflect a discussion of such an agreement:

Q. ... Can you tell me whether there's anything in those minutes that reflect even a discussion about a territorial boundary with Fountain Inn?

A. I do not see anything, no sir. (Tab 1, Smoak, Page 36, Line 7)

Smoak contended that maybe there had been a discussion with the Commission but that it occurred during an executive session. He was asked:

Q. But you definitely recall an executive session discussing with the Commission this [1992] territorial agreement.

A. Let's put it this way, *I feel sure I showed it to them*. Now, remembering the exact conversation? No, sir. (Tab 1, Smoak, Page 40, Line 13; Page 38, Line 9-23)

It is incredible to believe that Mr. Smoak, who was the General Manager of LCPW from 1985 to 2006, its highest executive officer, did not prepare a resolution to be adopted, did not have the Commission vote on the agreement, and cannot show that a potential territorial agreement with Fountain Inn was even discussed in a Commission meeting.

First, the minutes of LCPW commission meetings show that Mr. Smoak reported to the Commission on apparently small details such as a right of way having been cleared, but there is no mention that a meeting with Fountain Inn took place to discuss limiting where each gas system could provide service. (Tab 1, Smoak, Page 36, Line 18)

Second, there were almost immediately disagreements about the alleged agreement. In 1994, Fountain Inn complained that LCPW was serving a customer in its territory. (Tab 7) LCPW responded that there was some different agreement about those customers. (Tab 8) Smoak admitted that even though he drew a line on a map that was to be a boundary beyond which LCPW would not serve, LCPW had customers on the Fountain Inn side of the line. (Tab 1, Smoak, Page 27, Line 1 and following)

Third, LCPW clearly knew how to legally memorialize a boundary agreement. In 2004, LCPW's Commission voted to adopt a 17 page agreement with Laurens County Water & Sewer Commission. (Tab 9) The bulk of the agreement was a detailed recitation of where the boundary would lie.

C. No authority in gas managers

In *Carolina Power & Light Co. v. Darlington County*, 315 S.C. 5; 431 S.E.2d 580 (1993) the Supreme Court ruled that a fire chief did not have the authority to bind the city to a fire service agreement. The Court held:

In 56 Am.Jur.2d, *Municipal Corporations*, § 504 at 556 (1971), it states that:

A municipal corporation is not bound by a contract made in its name by one of its officers or by a person in its employ, although within the scope of its corporate powers, if the officer or employee had no authority to enter into such a contract in behalf of the corporation.

In *City of North Charleston v. North Charleston Dist.*, 289 S.C. 438, 346 S.E.2d 712 (1986), this Court held that a person who contracts with a municipality is charged with the knowledge of its limitations and restrictions in making contracts. On the present facts, this rule put CP & L in a position to *either insure that an ordinance or resolution existed*, or at a minimum that a contract was made through the Mayor. Moreover, because there is a large discrepancy in the contract procedures between CP & L and the city's other recipients of fire protection service, there is ample evidence to support the judge's findings. The Fire Chief's lack of authorization from the municipal government, along with the procedural variance, is fatal to the existence of capacity to enter into a contract for fire protection services.

It is clear from Mr. Smoak's deposition that even though he claimed to have the authority to bind LCPW, he understood that he could not do so:

- He put in writing that he would prepare a resolution for adoption by both Fountain Inn's City Council and the LPCW Board of Commissioners.
- In 2004, a territorial boundary resolution was adopted by LCPW; a boundary agreement was reduced to writing, the Commission voted on it, and minutes were kept that reflected its passage.
- As General Manager, Smoak had specific duties that included: "Develops and carries out policies, plans and programs as set forth by Commissioners." (Tab 10)

When asked at his deposition, Smoak admitted that "No, there was no written policy having to do with territory." (Tab 1, Smoak, Page 33, Line 1)

- The Commission had retained under its sole authority such mundane things as a policy about "reconnect hours" and "service after hours." (Tab 1, Smoak, Page 35, Line 7) It is difficult to believe that Smoak had the authority to bind the Commission on where it could provide natural gas service.

With regard to Fountain Inn, former Mayor Ben Davis testified that neither he nor Mr. Elliott had the authority to bind the city. (Tab 11, Davis, Page 12, Line 4) Carey Elliott, Fountain Inn's System Manager also testified that a resolution was needed to "make it a legal, binding agreement." (Tab 12, Elliott, Page 19, Line 20 to Page 20, Line 2)

D. Ultra Vires

Even if a valid contract existed, which Fountain Inn denies, it is *ultra vires*.

The Supreme Court determined that a contract with provisions that lasted beyond the term of the city council was an improper delegation of authority in *City of Beaufort v. Beaufort-Jasper County Water and Sewer*, 325 S.C. 174; 480 S.E.2d 728 (1997). The Supreme Court stated the facts of that case as follows:

Prior to April 1963, Authority became interested in installing water lines to serve certain Marine Corps facilities located at Parris Island and Beaufort. However, Authority lacked the funds to install the necessary water lines. In order to finance the construction, Authority entered into contracts with Beaufort and Port Royal whereby Municipalities agreed to purchase from Authority all their water for corporate purposes and for their own residents and customers. These contracts gave Authority the necessary funds for installation of the water lines to serve the Marine Corps. Authority's contract with Beaufort has twice been amended, most recently in 1976. Authority's contract with Port Royal was amended in 1966.

The Court stated that the offending provisions of the contract (the "Contested Clauses") were: "The Authority shall not sell water to be used by persons, private corporations or other

municipalities ... in Beaufort County, without the consent of Beaufort and the Town of Port Royal ... unless said City and/or Town refuse or neglect to render such service to such persons, private corporations or other municipalities within a reasonable time after the same has been demanded."

The Court determined, after a lengthy discussion about the length of the contract that: "We uphold the trial court's ruling that the Contested Clauses constitute an unlawful delegation of governmental power, both because the Contested Clauses bind future governing boards and, more importantly, because they give away too much power in themselves." *City of Beaufort v. Beaufort-Jasper County Water and Sewer*, 325 S.C. 174; 480 S.E.2d 728 (1997).

II. PROMISSORY ESTOPPEL

With regard to the party estopped, the elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, "or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;" (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Southern Dev. Land & Golf Co., v. South Carolina Pub. Serv. Auth.*, 311 S.C. 29, 33; 426 S.E.2d 748, 750 (1993). "As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position."

Rushing v. McKinney, 370 S.C. 280, 293-94, 633 S.E.2d 917, 924 (S.C. Ct. App. 2006).

There can be no estoppel in this case because LCPW recognized that the only way the parties could be bound to the alleged contract was by a resolution adopted by the Commission and the City Council. Neither of those actions occurred.

In addition, as the correspondence indicates, almost immediately there were claims that the "agreement" had been breached. LCPW's response was that there were side agreements that the parties had discussed; therefore, it claimed that no breach had occurred. LCPW prepared a

map on which Coleman Smoak placed a line beyond which he claimed would be Fountain Inn's "territory" where LCPW had existing customers. It had no intention to relinquish. Finally, Coleman Smoak stated that he would prepare a resolution and that both public bodies would vote during a public meeting to approve it. That never happened.

LCPW knew that neither Coleman Smoak, Carey Elliott nor Mayor Ben Davis had the authority to bind their respective entities. Therefore, LCPW knew Fountain Inn had not made a "promise" by which it could be estopped. There clearly was no "promise" or "concealment of facts" known only to the City of Fountain Inn. In addition, LCPW clearly cannot maintain that it lacked "knowledge of and the means of knowledge of the truth as to the facts in question."

III. SOUTH CAROLINA CODE ANNOTATED § 5-7-60

LCPW claims that it is entitled to unilaterally declare that all of Laurens County is its sole and exclusive territory pursuant to South Carolina Code Annotated §5-7-60. LCPW apparently relies on a phrase in that statute as follows: "For the purposes of this section, designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof."

Apparently, LCPW, which is a commission of public works of the City of Laurens (not the County of Laurens), believes that it has the authority to declare its own service area outside its City limits. This is simply not the case. In fact, to bolster its claim, LCPW passed a resolution on the same day this litigation was filed attempting to claim all of Laurens County as its service area. LCPW has no authority whatsoever to legislate outside the City limits of Laurens. It has provided this Court with no such authority.

Municipalities clearly have unique authority within their city limits. A commission of public works and a city council are both considered agencies of a municipal government. "[T]he board of commissioners is not in any sense a separate corporation *but a mere municipal*

agency, through whose management and control the General Assembly has required that the municipality shall operate and manage its waterworks...." *City of Spartanburg v. Blalock*, 223 S.C. 252, 259, 75 S.E.2d 361, 364 (1953).

South Carolina Code Ann. §5-7-60 was enacted as a part of the Home Rule Act of 1975. *City of Newberry v. Pub. Serv. Comm'n of S. Carolina*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986). The purpose of §5-7-60 was to delineate the powers of a municipality outside its corporate limits. The statute says that a city can only provide its services outside of its territorial boundaries "by contract." First and foremost, therefore, §5-7-60 is a limitation of authority on a municipality when it is acting outside of its territorial limits. The limitation specified is that municipal services provided outside of its territorial limits will only be by contract with the person or entity that is receiving the service.

The issue in this case revolves around the phrase "designated service area." LCPW contends that it can self designate an area that thus becomes its service area.

In *City of Darlington v. Kilgo*, 302 S.C. 40, 42, 393 S.E.2d 376, 377 (1990), the cities of Darlington and Hartsville sued the county administrator to enjoin Darlington County's plan to create a county wide fire district that would include all of the unincorporated areas of the county. The county contended that pursuant to the County Fire Protection Services Act it had the authority to create the district. The cities, on the other hand, contended that they already had contracts to provide fire service within a 5 mile radius of their borders. The cities contended that the county had to obtain their agreement before the county could provide fire service in the 5 mile area.

The cities' position was based on §5-7-60. The Supreme Court held that "[i]t is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire

protection district." *City of Darlington, id.*, at 302 S.C. 40, 44, 393 S.E.2d 376, 379 (1990). The Court went on to state that this "provision does not embody veto power, *but allows both entities to furnish service* with a determination of how the costs thereof shall be shared." [Emphasis added]

The disputed territory is outside of both municipal territorial limits. The significance of §5-7-60 is that if Laurens County decided to go into the natural gas business, it would have to obtain the agreement of Fountain Inn and LCPW.¹ Section 5-7-60 does not, however, provide LCPW (or Fountain Inn) with the ability to stop the other from providing natural gas service in the county, i.e., outside their respective territorial limits.

In *City of Darlington*, the issue was that both the county and the city wanted to provide the same service. The Court recognized that since the area being discussed was outside city limits, the county had the legal authority to provide fire protection services. The cities in *City of Darlington* did not claim that it had the right to provide the service, but that it already had contracts in place and that they were providing the service in the "limited" area immediately outside their city limits.

Here, the city limits of the city of Laurens is 15 miles away from the "disputed area" while it is 3 miles from the city limits of Fountain Inn.

In *Carolina Power & Light Co. v. Darlington County*, 315 S.C. 5, 8, 431 S.E.2d 580, 582 (1993) the Supreme Court explained its holding in *City of Darlington* and held that:

[The] legislative intent [of §§ 4-19-10 and 5-7-60] was to allow municipalities to continue to offer fire protection service in areas previously served under contract, and that such areas could not be included in any county district plan without prior agreement with the municipality.

The statutes as interpreted in *Kilgo*, supra, clearly require a valid contract with the city to avoid inclusion in the county fire district. As we stated in *Kilgo*, the legislative intent of the statutes is to allow counties to establish taxing districts for fire protection services without invading the province of another political subdivision or fire district. By necessity, it is required that a contract be in

¹ And that of Clinton-Newberry Natural Gas Authority.

existence to prevent an encroachment by a county fire district when boundaries are established. The use of some public authorization or ordinance by the appropriate municipal government is critical to put a county on notice, and to insure that there is no inclusion of an area already receiving fire service.

[Emphasis added]

Therefore, if §5-7-60 has any application to this case, the only "territory" that LCPW has is with respect to the customers that it has "under contract."

It is also important that the natural gas lines that LCPW has are "feeder" or supply lines. LCPW, Clinton-Newberry Natural Gas Authority and Fountain Inn Natural Gas all provide natural gas to customers in Laurens County. All three obtain their supply of natural gas from Transco. The Transco transmission lines are north of the city of Fountain Inn. Therefore, LCPW and Clinton-Newberry have supply lines that go through the city of Fountain Inn. LCPW had to construct natural gas lines to obtain a supply of natural gas for the city of Laurens. In early 1985, LCPW decided it needed to construct a second supply line. Smoak testified that the line was "a new feeder line, a 10-inch natural gas line that would run from our tap with Transco, which is up north of Fountain Inn, and run all the way to the City of Laurens." (Tab 1, Smoak, Page 10, Line 1) The purpose of the new line was "to give [LCPW] a second feeder from Transco...." (Tab 1, Smoak, Page 11, Line 3) The investment made by LCPW had little to do with providing natural gas to customers near Fountain Inn but far more with balancing its system and securing a reliable supply of natural gas for the city of Laurens.

LCPW claims that its natural gas service area encompasses the entire Laurens County, including Fountain Inn. (Tab 13) Clinton-Newberry Natural Gas Authority also contends that its service territory includes the northern portion of Laurens County as well as the southern part of Spartanburg County. (Tab 14) The City of Fountain Inn's service area spans both Greenville and Laurens counties.

In addition, Clinton-Newberry Natural Gas presumably has made a significant investment in and budgeted for the provision of natural gas services in the disputed area of Laurens County. Indeed, Coleman Smoak admitted that Clinton-Newberry provides service to customers in Laurens County some of which may violate a claimed territorial boundary. In addition, Clinton-Newberry also placed a bid on the ZF Transmission site, but LCPW did not sue them. (Tab 5, Satterfield, Page 20, Line 24)

III. CONCLUSION

For the reasons stated herein the City of Fountain Inn respectfully requests that the Court grant its Motion for Summary Judgment as to all causes of action.

April 20, 2013
Greenville, South Carolina

Respectfully submitted,

HOLMES LAW FIRM

By: 

David W. Holmes
Attorney for Defendant
SC Bar #2577

HOLMES LAW FIRM
712 N. Main Street
Greenville, SC 29609
Tel: 864-271-2381
Fax: 864-271-7994



1

1

1 about to install a new feeder line, a 10-inch
2 natural gas line, that would run from our tap with
3 Transco, which is up north of Fountain Inn, and
4 run all the way to the City of Laurens.

5 Q. Do you know who initiated that meeting in 1985?

6 A. As I remember, we did. The CPW in Laurens.

7 Q. Do you remember who attended that meeting?

8 A. I know that Mayor Gault was there. There was a
9 Mr. Moore, I believe, that worked at the City of
10 Fountain Inn. I know that some of our consultants
11 that were working in the natural gas area here
12 designing the 10-inch line were in that meeting,
13 and it seems like Mr. Clyde Taylor, who was in
14 charge of the gas system here, was in that
15 meeting.

16 Q. This would've been just about the time you were
17 made the General Manager.

18 A. Just before that, as I remember, sir.

19 Q. Just before that?

20 A. I'm thinking it was in early 1985.

21 Q. What was the result of those conversations?

22 A. We had approached Fountain Inn showing them where
23 we intended to install this 10-inch line. We were
24 attempting to get an answer from them as to how
25 far down this particular road they intended to

1 have their service area, because we did not want
2 to compete with them with this particular line.
3 This line was necessary to give us a second feeder
4 from Transco and we wanted to know how far down
5 that route they intended to serve before we began
6 hooking customers to that line. There was a
7 discussion of a road that was known as Tall Pines
8 Road. I don't remember the secondary number
9 designation of that road. That was where they
10 initially said we have no intention of coming
11 further south than this road.

12 Q. Were there any agreements drafted, letters sent
13 back and forth, or anything like that?

14 A. If there were I don't remember.

15 Q. So what did you understand was the result of that
16 meeting?

17 A. Well, as I understood it the result of that
18 particular meeting was that the division line was
19 going to be Tall Pines Road where it intersected
20 with - I think that's Fairview Road that goes out
21 of Greenpond toward Fountain Inn. At some point
22 there was a call from Fountain Inn saying that
23 they believed that what we had discussed was the
24 county line was going to be the division. There
25 was a conversation held about, you know, did they

Tara Scott and Associates
864-992-9544

1 was here.

2 Q. That's all right. I can't remember who I was with
3 yesterday. You mentioned Carey Elliott. Do you
4 know who he is?

5 A. I know that he was - that he had something to do
6 with the gas system in Fountain Inn at one time.

7 Q. Did you know what his capacity was?

8 A. I don't remember his title. No, sir. I'm sorry.

9 Q. Do you have any present impression about what it
10 was or why he would've attended that meeting?

11 A. Well, I'm assuming he was either Operations
12 Manager of the gas system or either City
13 Administrator, or something in that capacity.

14 Q. What was the purpose of that meeting?

15 A. It was to try to, for lack of a better way to say
16 it, to nail down where the boundary was going to
17 be between the two systems.

18 Q. Why did it need to be nailed down?

19 A. Well, by the time we got from '85 to 1992 we were
20 both actively involved in expanding the systems so
21 that it looked like the systems were going to
22 abut. We may be looking for potential customers
23 in the same areas.

24 Q. What happened at the meeting?

25 A. We developed a boundary that - in fact, this says

1 that there was a map at some point developed as to
2 where that boundary was going to be between the
3 two systems.

4 Q. Do you recall, as we're sitting here, how that
5 boundary was arrived at?

6 A. The boundary, as I remember, began at a point
7 that's known as the Overhead Bridge on 385.
8 That's the bridge that crosses over Old Highway 14
9 and over the railroad at the same time. If you
10 came down 385 it's the one that people don't seem
11 to know quite what to do because they're traveling
12 at about 70 miles an hour and everything narrows
13 down. It's not only a vertical curve, but a turn
14 to the right. That had been what I was told when
15 I went to work here as to where the boundary was
16 between the two systems. In fact, this CPW was
17 serving people just this side of that bridge when
18 I went to work here. We began there and came down
19 toward what is now - well it used to be Dispos-O
20 Plastics. I'm not sure what the name of it is
21 now. Fountain Inn was interested in coming down
22 that particular road to serve some subdivisions in
23 that area. The boundary line left that area and
24 then followed a creek, as I remember. We chose a
25 creek because we didn't want to try to install

Tara Scott and Associates
864-992-9544

1 Q. You also indicated that you were in the process of
2 preparing a resolution for adoption by both the
3 governing bodies; is that correct?

4 A. That's what this says. Yes, sir.

5 Q. Was that correct?

6 A. Yes, sir. It was.

7 Q. Did you prepare a resolution?

8 A. I have asked myself that question since I knew I
9 was going to give this deposition, and I do not
10 remember doing it.

11 Q. Do you recall whether or not LCPW ever voted on a
12 resolution?

13 A. I do not believe they did. No, sir.

14 Q. When the resolutions were prepared for LCPW, who
15 primarily did that function?

16 A. I did, sir.

17 Q. You did?

18 A. Yes, sir.

19 Q. Legal counsel didn't do it. You primarily did it.

20 A. That's correct.

21 Q. I'm specifically talking about 1992. Was Wyatt
22 Saunders the lawyer for LCPW then?

23 MR. HOCKER:

24 He was. I didn't come until '94.

25 (OFF THE RECORD)

1 identified of Fountain Inn?

2 A. This particular location goes back to that
3 discussion where I told you in 1985 we had been
4 told the boundary was in one place, but - no, they
5 said it was somewhere else, and it was my
6 understanding that everyone understood that if
7 anybody approached us in that strip that we
8 intended to serve them, but we would not actively
9 pursue, marketing, trying to serve those people.

10 Q. But in 1992 you prepared a map that you said LCPW
11 agreed to. What I'm asking you is - is this
12 corner inside the territory that LCPW alleges it
13 agreed to was Fountain Inn's?

14 A. During those discussions held on October 27, 1992
15 I discussed with Mr. Elliott that concern about
16 that strip and that that place was going to be
17 whoever served it. I mean, whoever was asked to
18 serve.

19 Q. What document, other than the letter from you to
20 Mr. Elliott and him back to you, and the map,
21 would tell anybody else that was not in that room
22 what the agreement was?

23 A. I don't know that there is one, sir.

24 Q. So it's just what you recall about the meeting or
25 what somebody else recalls was discussed at the

Tara Scott and Associates
864-992-9544

1 Q. Where do you believe Dispoz-O is?

2 A. Well, I know that it's on the corner of what used
3 to be old Highway 14, which becomes the Frontage
4 Road on the west side of Interstate 385, and it's
5 either this secondary road here or this one here.
6 I'm sorry. I mean, I can't tell you exactly.

7 Q. Do you believe it was inside LCPW's territory or
8 the Fountain Inn territory as shown on Exhibit 10?

9 A. Well, I believe it was in our territory because I
10 believe you'll find that we started serving it in
11 - I'm trying to remember the date.

12 Q. So let me make sure I understand. You understand
13 that the map that shows the boundary is the
14 correct boundary, except for other customers that
15 you had already been serving prior to the date the
16 boundary was agreed on?

17 A. Yes, sir. We didn't give away any customers when
18 we entered into this.

19 Q. So there are exceptions to the boundary? I'm just
20 trying to understand what that yellow line means.

21 A. Well, I think as I indicated we were already
22 serving people all the way up this road at the
23 time we entered into this agreement in 1992. We
24 didn't exchange any customers with each other or
25 give away anything we were already serving.

Tara Scott and Associates
864-992-9544

1 to the - those kinds of things. No, there was no
2 written policy having to do with territory.

3 Q. How did you know, as General Manager, what the
4 territory was if the Commission had never acted on
5 it, if they had never adopted anything, how did
6 you know what it was?

7 A. Well, I knew what I had agreed to with Fountain
8 Inn and I knew what had been agreed to with
9 Clinton/Newberry.

10 Q. What was agreed to with Clinton/Newberry?

11 A. There was a boundary line that basically is
12 halfway between here and the City of Clinton,
13 which is located about where the Laurens County
14 Hospital is now. That line ran from there to the
15 intersection of US221 South and South Carolina
16 Highway 72. It ran north of the hospital up to a
17 road known as Leesville Road and then proceeded
18 north west-ly, just north of I-385.

19 Q. Was that agreement memorialized?

20 A. No, sir.

21 Q. Do you know, today, if any agreement has ever been
22 memorialized with Clinton/Newberry about the
23 boundary?

24 A. Not that I know of.

25 Q. Did the Commission ever vote on that?

Tara Scott and Associates
864-992-9544

1 A. Yes, sir. I do know that, but I do not know what
2 they're serving in that particular area. You
3 asked me if they had any customers. I don't know,
4 sir.

5 Q. Also on the second page of Exhibit 16 at the very
6 bottom there was actually a motion made to adopt a
7 policy about reconnect hours, service after hours.

8 A. Yes, sir.

9 Q. Was that outside your authority?

10 A. Those policies had been adopted by the
11 commissioners and therefore they were the only
12 ones that could change them.

13 Q. Even though it didn't have one prior to that time?

14 A. I beg your pardon, sir?

15 Q. It says it was going to adopt a policy. It didn't
16 say amended or changes. It says adopted. Is that
17 correct?

18 A. That is what it says, but I do not know whether
19 this was changing an existing policy..

20 (WHEREUPON, CPW MEETING MINUTES CONSISTING OF 2 PAGES
21 WAS MARKED EXHIBIT 17 FOR IDENTIFICATION)

22 Q. Mr. Smoak, let me hand you Exhibit number 17,
23 which appears to be minutes of the Commission
24 dated December 14, 1992.

25 A. Yes, sir.

Tara Scott and Associates
864-992-9544

1 Q. Is that what they are?

2 A. Yes, sir.

3 Q. December 14, 1992 would've been after you wrote
4 your November 11, 1992 letter, including the map,
5 and after the November 17 back from Mr. Elliott
6 from Fountain Inn saying that there was an
7 agreement. Can you tell me whether there's
8 anything in those minutes that reflect even a
9 discussion about a territorial boundary with
10 Fountain Inn?

11 A. I do not see anything, sir.

12 Q. And your signature does appear for Ms. Beeks as
13 secretary; is that correct?

14 A. Yes, sir. It does.

15 Q. There's no question that you were in attendance at
16 that meeting.

17 A. That's correct.

18 Q. I notice in your report section of those
19 particular minutes you even reported on a
20 contractor clearing a right of way for
21 construction; is that correct?

22 A. Yes, sir.

23 (WHEREUPON, CPW MINUTES CONSISTING OF 4 PAGES, WAS
24 MARKED EXHIBIT 18 FOR IDENTIFICATION)

25 Q. I'm going to show you what's been marked as

Tara Scott and Associates.
864-992-9544

1 Q. In that January 11, 1993 meeting you also gave a
2 series of reports; is that correct?

3 A. Yes, sir.

4 Q. Is there anywhere in those minutes that you can
5 see where you advised the commissioners that you
6 had met with Fountain Inn and discussed a
7 territorial boundary agreement?

8 A. No, sir.

9 Q. Do you know what minutes would reflect the meeting
10 that you've just testified to took place whereby
11 you advised the commissioners of the territory
12 that you'd agreed to?

13 A. What you asked me --

14 MR. ELLIS:

15 Object to the form.

16 A. What you asked me was - was it shown in any of
17 these minutes that there was a discussion of that
18 agreement, and no, sir. There is nothing written
19 in any of these minutes to reflect that. Had it
20 been a contractual matter it would've been
21 discussed in executive session. There are lots of
22 places here where it says they went into executive
23 session.

24 Q. But they can't approve that in executive session,
25 can they?

1 than this time period covered in these letter.

2 Q. All right. Well, if you had met with them in
3 executive session and discussed the contract
4 matter, then you wrote Fountain Inn a letter in
5 November 1992 saying you were going to prepare a
6 resolution so that the governing body could adopt
7 it; did the Commission instruct you to prepare
8 resolutions and prepare it for their adoption?

9 A. No, sir. I don't remember that. No, sir.

10 Q. Okay. So, did that take place?

11 A. As I said - as I just said, I don't remember them
12 instructing me to do that. No, sir.

13 Q. But you definitely recall in an executive session
14 discussing with the Commission this territorial
15 agreement?

16 A. Let's put it this way, I feel sure I showed it to
17 them. Now, remembering the exact conversation?
18 No, sir.

19 (WHEREUPON, RESOLUTION 04-12 CONSISTING OF 1 PAGE, WAS
20 MARKED EXHIBIT 20 FOR IDENTIFICATION)

21 Q. Let me hand you what has been marked as Exhibit
22 20.. Do you recall that?

23 A. Yes, sir. I remember this.

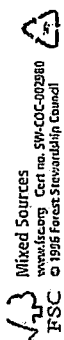
24 Q. Did you prepare resolution 04-12?

25 A. I believe that I did. Yes, sir.

Tara Scott and Associates
864-992-9544

2

2





212 CHURCH STREET
POST OFFICE BOX 342
LAURENS, SOUTH CAROLINA 29359-0342

(803) 894-0421
FAX (803) 894-5255

COMMISSIONERS
MARSHALL W. ABERCROMBIE
ULYSSES CUMMINGS
THOMAS K. HARDY
GARY P. MOORE
WILLIE B. PADEN

November 11, 1992

Mr. Carey Elliott
Town of Fountain Inn
200 North Main Street
Fountain Inn, South Carolina 29644

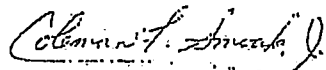
Re: Territorial Boundary

Dear Mr. Elliott:

Enclosed is a map on which I have located the proposed location of the territorial boundary between our gas systems. I believe that it reflects our conversation and discussion which was held in this office on October 27, 1992.

I look forward to your comments.

Sincerely,


Coleman F. Sinoak, Jr.
General Manager

CFSjr/jhj

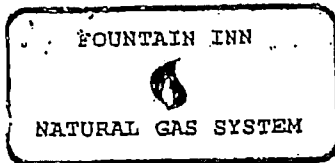
Enclosure

cc: Mr. Scott Heath, w/enc.

EXHIBIT	9
WITNESS:	Coleman Sinoak
DATE:	2-16-2012
TARA T. SCOTT & ASSOCIATES	

3

3



Fountain Inn Natural Gas System

November 17, 1992

Carey E. Elliott, Systems Manager

A.W. Moore, Superintendent

Deborah M. Jacobson, Accounts Supervisor

Mr. Coleman F. Smoak, Jr.
General Manager
Commission of Public Works
P.O. Box 349
Laurens, SC 29360-0349

Re: Territorial Boundary for Natural Gas Systems

Dear Coleman:

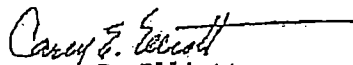
This letter is in reply to our meeting of October 27, 1992, regarding the establishment of territorial boundary for our natural gas systems.

The boundary map mailed to us on November 11, 1992, does reflect our previous conversation and is in agreement with the Fountain Inn City Council.

However, as discussed, the Fountain Inn Natural Gas System expects the privilege of serving customers within our city limits. This includes future areas of annexation.

Thank you for your spirit of cooperation in this matter.

Sincerely,


Carey E. Elliott
Systems Manager

CEE/krc

cc: Mayor Ben Davis
Sam Moore
Berry Woods, Jr.

EXHIBIT <u>11</u>
WITNESS: <u>Coleman Smoak</u>
DATE: <u>2-16-2012</u>
TARA T. SCOTT & ASSOCIATES

200 North Main Street • Fountain Inn, S.C. 29644
Phone 803 442-1111 • FAX 8 (803) 442-5637

4

4



215 CHURCH STREET
FLORENCE, SOUTH CAROLINA 29502-1000

803/661-6100
FAX 803/661-6102

COMMISSIONERS
MARSHALL W. ABERNETHY
ULYSSES CUMMINGS
THOMAS K. HADLEY
GARY F. MOORE
VICTOR P. PARDUE

November 25, 1992

Mr. Carey E. Elliott
Fountain Inn Natural Gas System
200 N. Main St.
Fountain Inn, South Carolina 29644

Re: Territorial Boundary for
Natural Gas

Dear Mr. Elliott:

I am pleased to learn that the map I sent on October 27, 1992, reflects your understanding of the referenced boundary. I am in the process of preparing a resolution for adoption by both of our governing bodies.

While I recognize the need to serve city services within city limits, I would appreciate your thoughts with regard to our existing customers which may be annexed.

Sincerely,

Coleman F. Smoak, Jr.
General Manager

CFSjr:jj

EXHIBIT	12
WITNESS	Coleman F. Smoak
DATE	2-16-2012
TARA T. SCOTT & ASSOCIATES	

LCPW 0003

5

5

Page 10	Page 12
1 agreement between Fountain Inn and LCPW that was 2 alleged to have taken place about a territory 3 boundary agreement in '92? 4 A. Very vaguely. My first phone call was 5 to Coleman Smoak as it has been throughout the years 6 to try to gain knowledge as to what has transpired 7 in different situations. 8 Q. Okay. And when -- 9 A. But I had no intimate knowledge, no. 10 Q. Okay. And when would you have called 11 Mr. Smoak about it? 12 A. Probably during the ZF project. 13 Q. Okay. And why would that have come 14 up? 15 A. Well, we became concerned when 16 Fountain Inn notified us that they would be -- well, 17 actually, we were notified, I think, by the economic 18 development folks in Laurens County that Fountain 19 Inn would be bidding on the project. 20 Q. Okay. And did that concern you? 21 A. Oh, yes. 22 Q. And tell me why. 23 A. Because we had assumed that was our 24 territory. We had put gas lines in there and 25 prepared to serve that area and had the investment	1 in the state? 2 A. Yes. It removes all the risk from a 3 project looking at an area, yes, sir. 4 Q. I understand. All right. Now, since 5 this litigation has arisen, have you made any effort 6 to search the official records of LCPW to determine 7 whether or not there was a resolution adopted to 8 approve where the commission approved the agreement? 9 A. Yes, sir. I have. 10 Q. Have you found one? 11 A. No, sir. 12 Q. Okay. So as far as you know one does 13 not exist? 14 A. As far as I know. 15 Q. All right. I'm going to hand you a 16 document that says it is Resolution 11-03, and ask 17 you if you can identify that, please, sir. 18 A. Yes, sir. We had this adopted in the 19 midst of all the goings-on. 20 Q. All right. When you say we had 21 adopted, you mean -- 22 A. The board. 23 Q. -- the commission? 24 A. The board of commissioners, yes, sir. 25 Q. And who prepared the document that
Page 11	Page 13
1 there. 2 Q. Okay. Are you aware of anything that 3 would have prohibited Fountain Inn from serving that 4 area? 5 A. Once I learned of the territorial 6 line, yes, sir. 7 Q. Okay. Well, I'm talking about other 8 than what you know about this. Is there anything -- 9 A. Well, other than on the site 10 certification Laurens CPW is listed as the gas 11 provider. 12 Q. Is that in the development 13 corporation's documents they put together for the -- 14 A. No, sir. That's from the site 15 certification from the State. 16 Q. Okay. As part of an economic 17 development project? 18 A. As a certified site. That lists who 19 provides which utilities. 20 Q. All right. Well, are you familiar 21 with what the certification process is with the 22 State? 23 A. Somewhat. Yes, sir. 24 Q. Okay. Do you know it has to do with 25 economic development encouraging business to locate	1 is -- well, let's get the court reporter to go ahead 2 and mark that. 3 (DFT. EXH. 6, Resolution No. 11-03, was marked for 4 identification.) 5 BY MR. HOLMES: 6 Q. We're doing them consecutively. You 7 have Exhibit 6 in front of you that's Resolution 8 Number 11-03. 9 A. Right. 10 Q. Do you know who prepared that 11 document? 12 A. I believe that document was prepared 13 by McNair Law Firm -- 14 Q. Okay. 15 A. -- in conjunction with our attorney. 16 Q. Okay. And who is -- 17 A. Donald Hocker. 18 Q. Is it your signature on the third page 19 of that document? 20 A. That is correct. The attesting 21 signature. 22 Q. Sure. And it's dated March 30th, 23 2011? 24 A. That's correct. 25 Q. All right. And the signatures of the

Page 18	Page 20
1 with ZF coming online and who might be providing 2 natural gas service; is that correct? 3 A. That is correct, yes. 4 Q. And at least in February, CPW was 5 aware that Fountain Inn and perhaps others were 6 interested in proposing to provide natural gas 7 service to CPW -- I mean to ZF? 8 A. I can't attest to the timeframe, but, 9 yes, we were aware of that at some point, yes. 10 Q. Okay. And if Mr. Young had -- did you 11 and Mr. Young have any discussion about the 12 agreement? 13 A. I was out of town when all of this 14 began at a meeting. 15 Q. Okay. So I'd have to ask Mr. Young 16 about the gentleman's agreement? 17 A. Or Mr. Moss. 18 Q. Okay. Did you know that Mr. Moss had 19 given that information to ZF? 20 A. I saw this after the fact, yes, to the 21 best of my knowledge. 22 MR. HOLMES: Okay. Mark this as 23 Exhibit 9, please. 24 (DFT. EXH. 9, Email March 9, 2011 1:57 p.m., was 25 marked for identification.)	1 Exhibit 10 please. 2 (DFT. EXH. 10, Email March 17, 2011 2:04 p.m., was 3 marked for identification.) 4 BY MR. HOLMES: 5 Q. I have provided you Exhibit Number 10, 6 and this appears to be an email string. First an 7 email from you, and then an email from Mr. Bryson; 8 is that correct? 9 A. That is correct, yes. 10 Q. Okay. Why did you send an email on 11 March 17 to Mr. Bryson and Mr. Pitman? 12 A. In anticipation of the conflict that 13 seemed to be arising, that was my attempt to get the 14 three gas providers that serve Laurens County in the 15 same room and try to find some resolution to our 16 situation. 17 Q. Okay. Was Clinton Newberry planning 18 to submit a proposal? 19 A. I was informed by Mr. Bryson that was 20 his intent if Fountain Inn was going to offer a 21 proposal. 22 Q. Are you aware of whether or not 23 Clinton Newberry submitted a proposal? 24 A. Mr. Bryson led me to believe that he 25 would submit one.
Page 19	Page 21
1 BY MR. HOLMES: 2 Q. I've handed you Exhibit Number 9, 3 which appears to be an email, I think, from you to 4 Mike Pitman dated March 9, 2011. Do you recognize 5 that or is that what that is? 6 A. Yes. That's my email. 7 Q. Okay. And it says that you had spoken 8 to Mr. Young and he conveyed the board's, I'm 9 assuming that's LCPW, desire not to merge the gas 10 operations? 11 A. I'm vague as to the intent of that 12 communication, but I would assume that we -- it was 13 our desire not to intermingle our gas systems. 14 Q. What do you mean by that? 15 A. Well, if it was his intent to come 16 down and serve ZF, then he was going to have gas 17 lines intermingled in where we already had gas 18 lines. But I'm vague as to what my intent of that 19 message to be conveyed is. 20 Q. Okay. And it indicated you would meet 21 again on March 21. Did you mean the board of 22 commissioners would meet? 23 A. I'm not sure exactly which meeting 24 that is among the multiple meetings. 25 MR. HOLMES: Okay. Mark this as	1 Q. Okay. And were you aware of whether 2 he did or not? 3 A. No, sir. 4 Q. So I'm assuming you've never seen one? 5 A. No. I haven't seen either Fountain 6 Inn or Clinton Newberry's proposal and would not 7 expect to see those proposals. 8 Q. Okay. And did LCPW and Clinton 9 Newberry enter into any kind of an agreement about 10 the ZF plant? 11 A. What type of agreement? 12 Q. Any agreement. 13 A. No, sir. 14 Q. Whether they were going to bid, not 15 bid, provide it, not provide it? 16 A. No, sir. No, sir. 17 Q. Did LCPW sue Clinton Newberry claiming 18 that there was a -- that the ZF plant was in their 19 territory? 20 A. No, sir. 21 Q. Why not? 22 A. Because Clinton Newberry was not the 23 lead in proposing, making a proposal to that plant. 24 And it was their intent that if Fountain Inn did not 25 make a proposal, they would not.

6

6

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

**AFFIDAVIT OF
EDWARD C. CASE**

I, Edward C. Case, after being duly sworn, depose and state as follows:

1. I am the City Administrator for the City of Fountain Inn, South Carolina. As such, I am familiar with and have reviewed the official books and records of the City of Fountain Inn that may pertain to the lawsuit between the Laurens Commission of Public Works and the City of Fountain Inn.

2. Prior to becoming the City Administrator in 2006, I served as Council Member on the Fountain Inn City Council. I served from 1975 to 1995.

3. There were never any discussions during a meeting of the Fountain Inn City Council concerning a territory boundary agreement between the City of Fountain Inn and LCPW. City Council never voted on any territory boundary agreement, nor was City Council ever asked to vote on such an Agreement.

4. The City Council also works through committees, one of which is the Gas Committee. At each council meeting, each committee chair makes a report to the council. A record of the committee report is contained in the minutes of the Council meeting.

5. I have reviewed the City of Fountain Inn's Council Minutes for any record that the City Council discussed or voted on a territory boundary agreement or a resolution approving a territory boundary agreement with LCPW. I could find no reference to a territory boundary agreement with LCPW in any of the City's minutes.

6. We have asked in this lawsuit that LCPW provide a copy of any resolution adopted concerning a territory agreement or any minutes reflecting that such an agreement was discussed or voted upon. No resolution has been produced. The minutes of LCPW's meetings that have been produced for the period when the alleged agreement was entered contain no reference to such an agreement.

7. The only documents that I am aware of that refer to any discussions about a territory boundary agreement with LCPW are letters between Mr. Carey Elliott, the City's former Gas Manager and Coleman F. Smoak, Jr. of LCPW. One of those documents is a letter (Exhibit A) dated November 25, 1992 from Mr. Smoak to Mr. Elliott indicates that he "was in the process of preparing a resolution for adoption by both of our governing bodies" and that he was going to forward that to the City of Fountain Inn for approval. As I stated previously, no such resolution exists nor have I ever seen a proposed resolution.

8. Prior to this lawsuit being filed, we requested LCPW to furnish us with a copy of a resolution that LCPW may have adopted on a territory agreement. LCPW has not produced a resolution, so we assume one does not exist.

9. On March 21 2011 at 2:00 P.M., LCPW invited the City of Fountain Inn to attend a meeting to discuss a resolution of the boundary dispute. City representatives attended the meeting without realizing that LCPW had already met with attorneys. On March 30, 2011, the same day the lawsuit was filed, LCPW provided a copy to Kenneth Walsh with Jones Lang LaSalle, the firm used by ZF to receive bids concerning natural gas on the ZF site. This letter is attached as Exhibit B.

10. Mr. Elliott did not have the authority to enter into a boundary agreement on behalf of the City. As City Administrator, I do not have that authority.

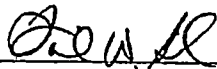
11. There is no boundary agreement between the City and LCPW.

12. Attached as Exhibit C is a map that shows where Fountain Inn serves customers in Greenville County; and Exhibit D which shows where Fountain Inn serves customers in Laurens County.

13. Attached as Exhibits E and F are maps on which we attempted to overlay the alleged 1992 boundary map, and they depict LCPW customers in what it claims is Fountain Inn territory.

Further the affiant saith naught.

SWORN to before me this
3 day of Aug, 2011.



Notary Public for South Carolina
My commission expires: 04/12/2021

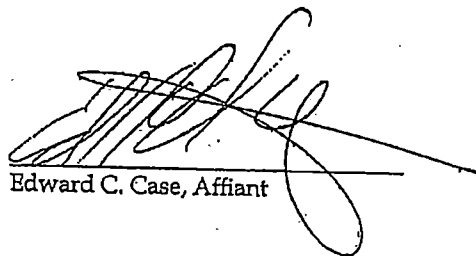
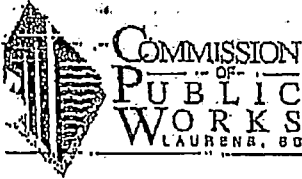

Edward C. Case, Affiant

EXHIBIT A



12 CHURCH STREET
CITY OFFICE BOX 348
LAURENS, SOUTH CAROLINA 29360-0348

(03) 004-0481
AX (003) 004-6366

COMMISSIONERS
MARSHALL W. ABERCROMBIE
LYBBER CUNNINGHAM
THOMAS K. HARDY
ARY P. MOORE
ALLIGB. PADEN

November 25, 1992

Mr. Carey E. Elliott
Fountain Inn Natural Gas System
200 N. Main St.
Fountain Inn, South Carolina 29644

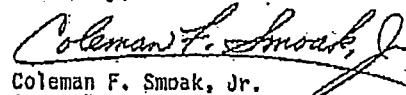
Re: Territorial Boundary for
Natural Gas

Dear Mr. Elliott:

I am pleased to learn that the map I sent on October 27, 1992, reflects your understanding of the referenced boundary. I am in the process of preparing a resolution for adoption by both of our governing bodies.

While I recognize the need to serve city services within city limits, I would appreciate your thoughts with regard to our existing customers which may be annexed.

Sincerely,


Coleman F. Smoak, Jr.
General Manager

CFSjr:jj

EXHIBIT B



Reliable. Neighborly. Service.

212 CHURCH STREET
POST OFFICE BOX 349
LAURENS, SOUTH CAROLINA 2950-0349

(884) 681-4300
FAX (864) 681-4301
www.cpw.com

March 30, 2011

Via E-Mail Transmission

Kenneth P. Walsh, Jr.
Vice President
Jones Lang Lasalle
6805 Morrison Boulevard, Suite 200
Charlotte, North Carolina 28211

Re: - Laurens Commission of Public Works
Natural Gas Service to ZF Transmission Manufacturing Facility

Dear Mr. Walsh:

We want to make you and ZF Transmission aware of a certain legal action which the Laurens Commission of Public Works ("LCPW") has filed against the City of Fountain Inn, South Carolina. A copy of the Complaint which was filed on March 30, 2011 is enclosed. As you will note, LCPW has asserted its legal right to provide natural gas service to an area outside the City of Laurens corporate limits defined as its Natural Gas Designated Service Area under various legal grounds. Our intention is not to allow this litigation matter to delay the construction of the ZF Transmission Project.

As stated in our earlier proposal to you, we assure you that LCPW stands ready to provide natural gas service to ZF Transmission at the times and in the amounts required.

If additional information is needed or, if you or representatives of ZF Transmission should have any questions, please do not hesitate to contact me.

With kind regards,

Yours very truly,

Dale Satterfield, General Manager
Laurens Commission of Public Works

ELECTRICITY * NATURAL GAS * WATER ** SANITARY SEWER

EXHIBIT C

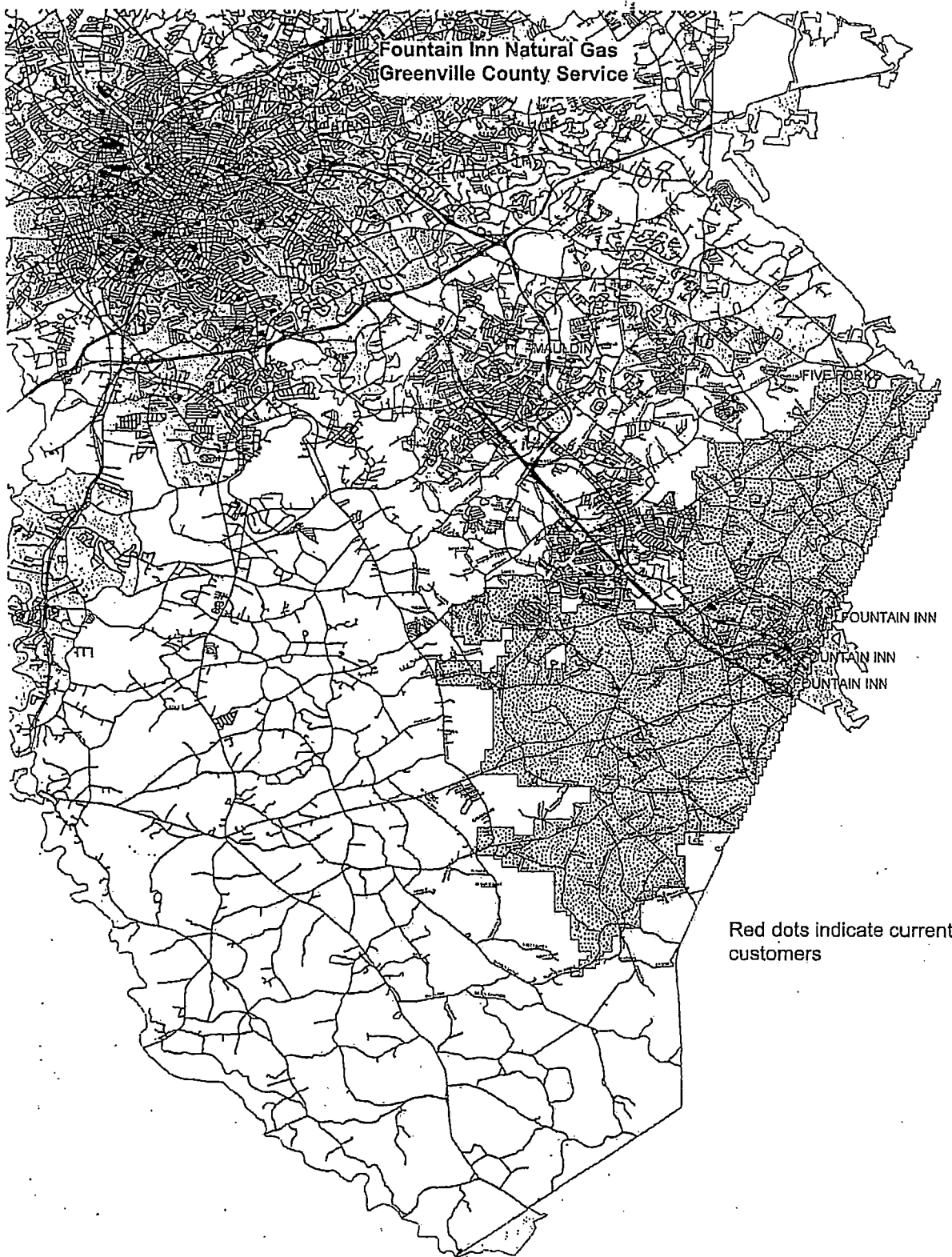


EXHIBIT D

Fountain Inn Natural Gas
Laurens County Service

Red dots indicate current customers.

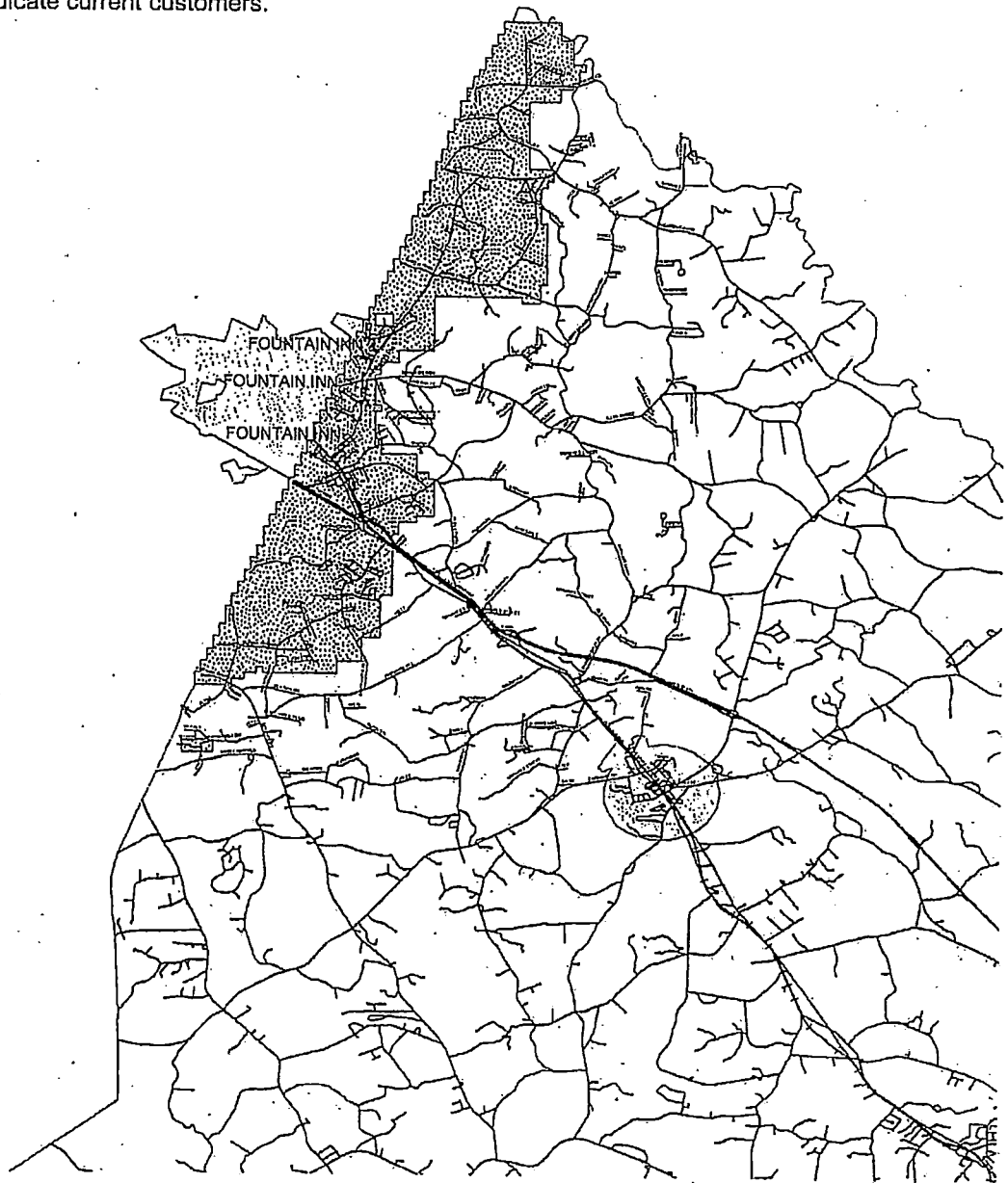


EXHIBIT E

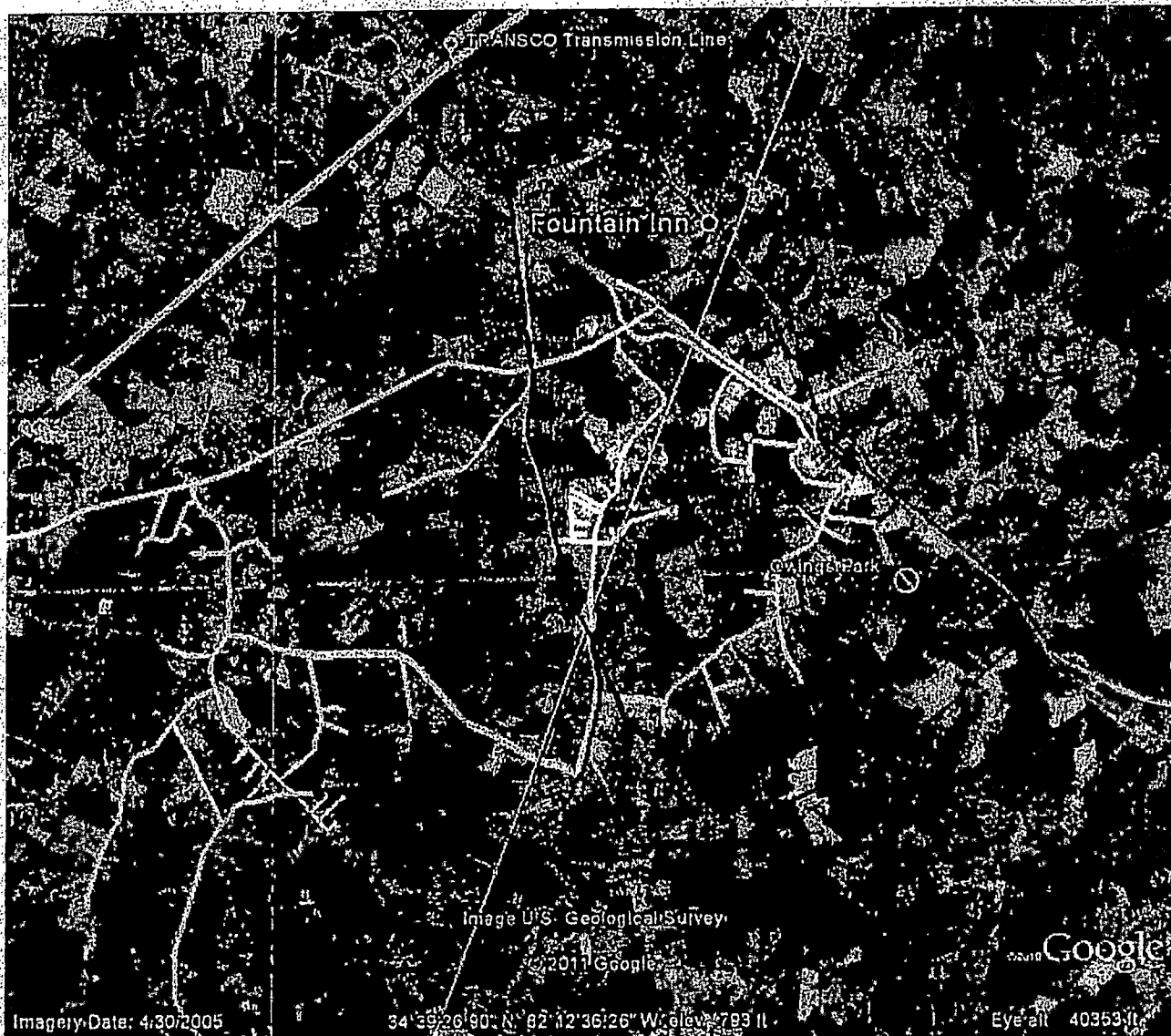
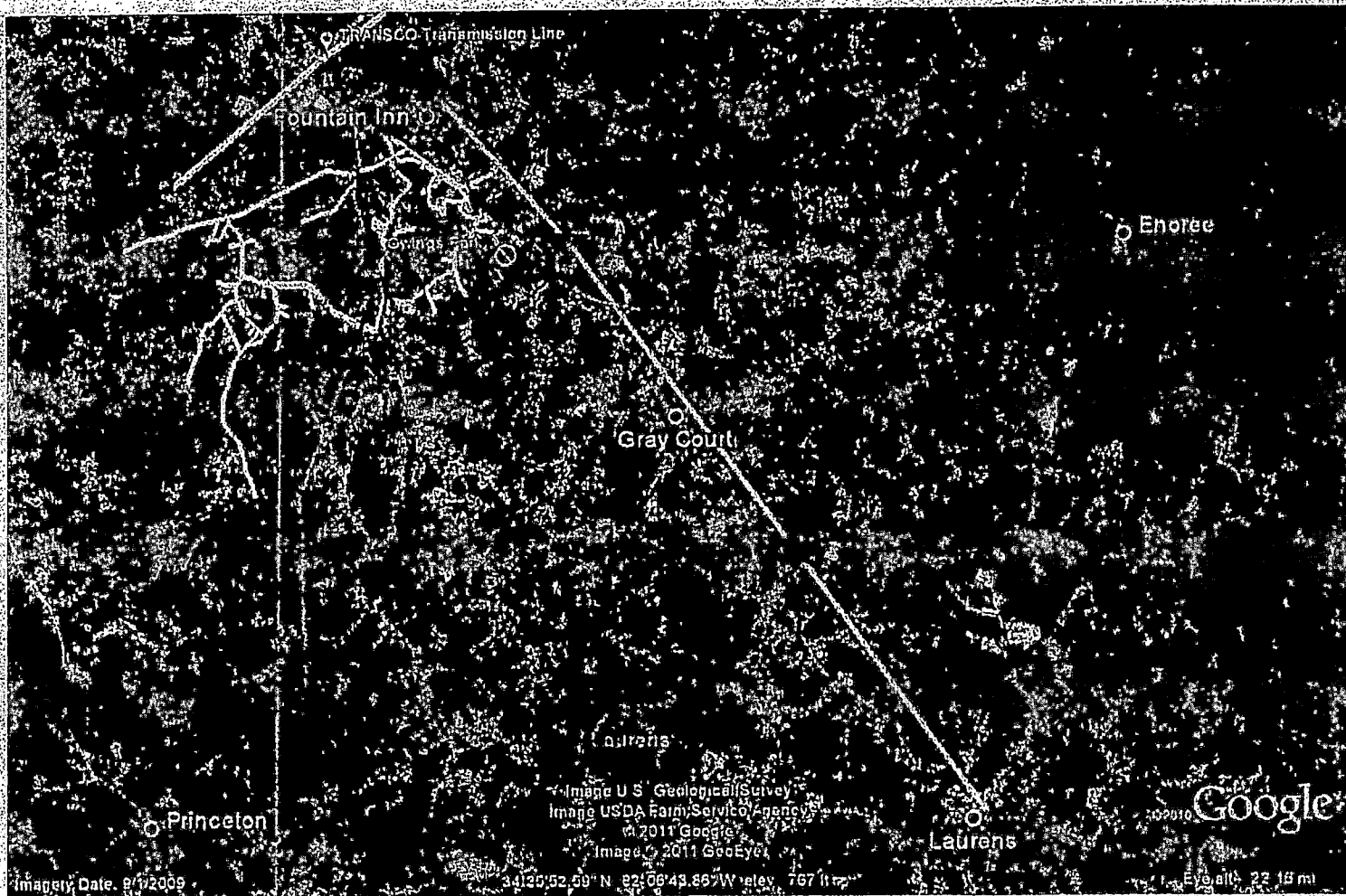
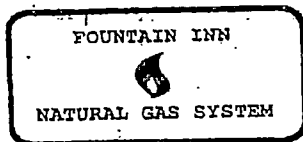


EXHIBIT F



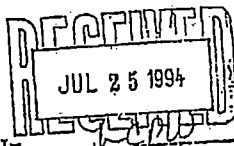
7

7



Fountain Inn Natural Gas System

July 22, 1994



Mr. Coleman F. Smoak, Jr.
General Manager
Commissioner of Public Works
P.O. Box 349
Laurens, SC 29360-0349

Carey E. Elliott, Systems Manager

A.W. Moore, Superintendent

Deborah M. Jacobson, Accounts Supervisor

Re: Territorial Boundary of Natural Gas Systems

Dear Coleman:

This letter is to ask your compliance with our service area agreement of November 11, 1992.

I have been informed that Laurens CPW has recently provided gas service via farm tap from your high pressure line to a new residence near the corner of Andrews Road and Greenpond Road.

We realize that this is not an intentional violation of our agreement. We would, however, appreciate your consideration in this regard.

Sincerely,

Carey E. Elliott
Systems Manager

CEE/krc

cc: Mayor Ben Davis
Sam Moore

200 North Main Street • Fountain Inn, S.C. 29644
(803) 862-4421/4422 • FAX # (803) 862-5637

EXHIBIT	13
WITNESS:	Coleman Smoak
DATE:	2-16-2012
TARA T. SCOTT & ASSOCIATES	

LCPW 0006

8

8



212 CHURCH STREET
POST OFFICE BOX 640
LAURENS, SOUTH CAROLINA 29304-0640

(803) 684-0481
FAX (803) 684-0485

COMMISSIONERS
MARSHALL W. ADENROMBIE
ULYSSES GUNNINGHAM
THOMAS K. HARRY
CARY P. MOORE
WILLIE R. PAUGH

August 15, 1994

Mr. Carey E. Elliott
System Manager
Fountain Inn Natural Gas System
200 North Main Street
Fountain Inn, South Carolina 29544

Re: Territorial Boundary for
Natural Gas

Dear Carey:

It is our understanding that the section of Greenpond Rd. (S-543) from S-154 to the County Line was to be handled differently from the boundary shown in our agreement. You will remember that, during our first conversations in 1985, Mayor Gault indicated that you had no intention of serving south of S-154; subsequently, he stated that he had meant that Fountain Inn would not serve across the County Line.

Because of this "misunderstanding", we indicated in our latest discussions with you that we would agree to the boundary included with my letter of November 11, 1992, but that, with regard to S-543 (between S-154 and the County Line) we would serve if requested. However, we agreed that we would not actively pursue customers along this road section and that we would not expand to other roads off of this section.

As stated in your letter, we have not intentionally violated our agreement and in fact do not believe that it has been violated.

Sincerely,


Coleman F. Smoak, Jr.
General Manager

CFSjr/jhj

EXHIBIT	14
WITNESS:	Coleman Smoak
DATE:	8-16-2012
TARA T. SCOTT & ASSOCIATES	

9

9

RESOLUTION 04- 12

A RESOLUTION AUTHORIZING THE CHAIRMAN TO EXECUTE A TERRITORIAL AGREEMENT WITH THE LAURENS COUNTY WATER AND SEWER COMMISSION

Whereas, the Commission of Public Works of the City of Laurens, South Carolina (the "LCPW") owns, operates, and maintains the water and sanitary sewer systems in and around the City of Laurens, South Carolina; and

Whereas, the Laurens County Water and Sewer Commission (the "LCWSC") owns, operates, and maintains a water distribution and sanitary sewer system in other parts of Laurens County, South Carolina; and

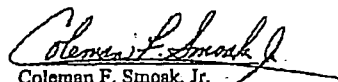
Whereas, the LCPW and the LCWSC desire to enter an agreement outlining the boundary between their respective service areas; now, therefore,

BE IT RESOLVED that the Chairman of the LCPW is hereby authorized and directed to execute, on behalf of the LCPW, a territorial agreement with the LCWSC substantially in the form attached; and

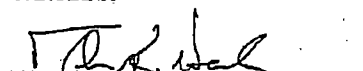
BE IT FURTHER RESOLVED that, should it be necessary, in the Chairman's opinion to amend the attached before execution, he is hereby authorized and directed to make such amendment and report the amendment to the LCPW at its next regular meeting.

Adopted this 13th day of September, 2004.

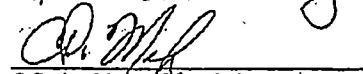
ATTEST: (Seal)

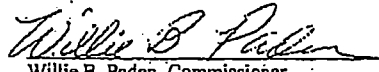

Coleman F. Sinoak, Jr.
General Manager

COMMISSION OF PUBLIC WORKS OF
THE CITY OF LAURENS, SOUTH
CAROLINA


Thomas K. Hardy, Chairman


Ulysses Cunningham, Commissioner


C. Parker Moore, Commissioner


Willie B. Paden, Commissioner


Van F. Patterson, Commissioner

EXHIBIT	20
WITNESS	Coleman Sinoak
DATE	2-16-2012
TARA T. SCOTT & ASSOCIATES	

LCPW 0594

COMMISSION OF PUBLIC WORKS

REGULAR MEETING

SEPTEMBER 13, 2004

10:00 AM

Present Chm. Hardy, Comm. Cunningham, Comm. Moore, Comm. Paden,
Comm. Patterson, Mgr. Smoak, Asst. Mgr. Satterfield, Mark. Dir. Young,
Mr. Don Hocker, and Mr. Steve Biondo.

Invocation Chairman Hardy called the meeting to order, and Asst. Mgr. Satterfield
gave the invocation.

Minutes Motion was made by Comm. Cunningham, seconded by Comm. Moore, to
approve the minutes of July 12, 2004, as submitted.
Approved unanimously.

Scout Branch Motion was made by Comm. Patterson, seconded by Comm. Cunningham,
Lift Station to adopt Resolution 04-10 authorizing the Chairman to execute the
Summary Change Order to the contract of the Scout Branch Lift Station
Repairs (copy attached).
Approved unanimously.

Employee Motion was made by Comm. Moore, seconded by Comm. Cunningham, to
Handbook adopt a new employee handbook (copy attached).
Approved unanimously.

At Will Motion was made by Comm. Paden, seconded by Comm. Cunningham, to
Employment adopt Resolution 04-11 declaring At Will Employment at the CPW (copy
attached).
Approved unanimously.

LCWSC Motion was made by Comm. Patterson, seconded by Comm. Cunningham,
to adopt Resolution 04-12 authorizing the Chairman to execute a territorial
agreement with the Laurens County Water and Sewer Commission (copy
attached).
Approved unanimously.

Motion was made by Comm. Cunningham, seconded by Comm. Moore, to
adopt Resolution 04-13 authorizing the Chairman to execute an
amendment to the Water Service Agreement with the Laurens County
Water and Sewer Commission (copy attached).
Approved unanimously.

EXHIBIT	21
WITNESS:	Coleman Smoak
DATE:	2-16-2012
TARA T. SCOTT & ASSOCIATES	

LCPW 0559

CPW Minutes

~~November 8, 2004~~ September 13, 2004

Page 2

LaurensFirst

Motion was made by Comm. Moore, seconded by Comm. Paden, to adopt Resolution 04-14 authorizing and establishing LaurensFirst, the City of Laurens Economic Development Corporation (copy attached).
Approved unanimously.

Financial Reports

Motion was made by Comm. Cunningham, seconded by Comm. Paden, to accept the Financial Report for June 2004 as submitted.
Approved unanimously.

Motion was made by Comm. Paden, seconded by Comm. Patterson, to accept the Financial Report for July 2004 as submitted.
Approved unanimously.

Executive Session

Motion was made by Comm. Patterson, seconded by Comm. Cunningham, to enter Executive Session for the discussion of legal and contractual matters and to return to Public Session at the call of the chair.
Approved unanimously.

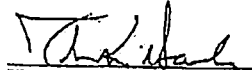
Adjournment

After returning to public session and there being no further business, on motion by Comm. Cunningham seconded by Comm. Patterson, the meeting was adjourned.

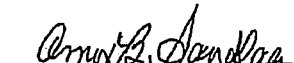
LCPW 0560

CPW Minutes
~~November 8, 2004~~ September 13, 2004
Page 3

APPROVED:

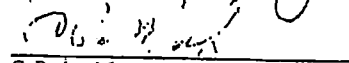

Thomas K. Hardy, Chairman

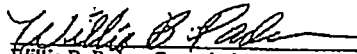
ATTEST:


Amy B. Sandlass, Secretary

11/08/04
Date


Ulysses Cunningham, Commissioner


C. Parker Moore, Jr., Commissioner


Willie B. Paden, Commissioner


Van F. Paterson, Commissioner

LCPW 0561

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

WATER AND SEWER SERVICE
AREA AGREEMENT

WHEREAS, the COMMISSION OF PUBLIC WORKS of the City of Laurens (the CPW) provides water and wastewater collection service to those areas within the city limits of Laurens and also to certain areas outside of its city limits in its current service area,

AND;

WHEREAS, the LAURENS COUNTY WATER AND SEWER COMMISSION (LCWSC) provides water and wastewater collection service to all areas of Laurens County except for the City of Laurens and the City of Clinton and the agreed upon areas outside the city limits of the City of Laurens and the City of Clinton,

AND;

WHEREAS, the CPW and LCWSC desire to establish this agreement delineating the service area of the Commission of Public Works of the City of Laurens;

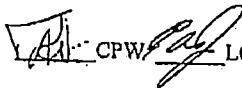
NOW THEREFORE, the CPW and the LCWSC, hereby enter into this agreement, establishing the service area of the City of Laurens, State of South Carolina, as follows:

All present and future property within the city limits of the City of Laurens shall be served by the CPW; the agreed upon service area outside the current city limits of the City of Laurens shall be as follows:

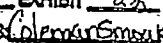
DESCRIPTION OF THE LAURENS CPW SERVICE AREA IS DELINEATED AS
FOLLOWS:

Starting at the intersection of the centerlines of US Highway 221 South and Burnt Mill Creek and proceeding 1,500 feet more or less in a westerly direction along Burnt Mill Creek to a point said point being the intersection of the centerline of Burnt Mill Creek and the common property line between current tax map #'s 356-00-00-18 and 356-00-00-17;

Thence turning southwesterly along the common property line of current tax map #'s 356-00-00-18 and 356-00-00-17 and continuing along that line for a distance of 1,300 feet more or less then turning northerly and continuing along the common property line between current tax map #'s 356-00-00-18 and 356-00-00-17 for a distance for 650 feet more or less to a point said point being the

 CPW  LCWSC

- 1 -

EXHIBIT	22
WITNESS	
DATE	2-16-2012
TARA T. SCOTT & ASSOCIATES	

LCPW 0595

intersection of the common property lines between current tax map #'s 356-00-0015, 356-00-00-17 and 356-00-00-18;

Thence continuing in a southerly direction along the property line between current tax map #'s 356-00-00-15 and 356-00-00-18 for a distance of 250 feet more or less to a point;

Thence southwesterly along the common property line between current tax map #'s 356-00-00-15 and 356-00-00-18 said property line being along the centerline of an unnamed creek which forms the southern boundary of current tax map #'s 356-00-00-14 and 356-00-00-13, 356-00-00-32, 356-00-00-21 and 356-00-00-08 to the intersection with the common property line between current tax map #'s 356-00-00-08 and 356-00-00-03;

Thence continuing in a northerly direction along the common property line between current tax map #'s 356-00-00-08 and 356-00-00-03;

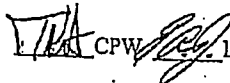
Thence continuing northerly along the common property line between current tax map #'s 356-00-00-03 and 356-00-00-05 to a point, said point being the intersection of the property lines between current tax map #'s 356-00-00-03, 356-00-00-05 and 356-00-00-04;

Thence continuing westerly along the southern property lines of current tax map #'s 356-00-00-04, 356-00-00-02 and 357-00-00-35 to the centerline of Strickland Avenue;

Thence in a northerly direction along the centerline of Strickland Avenue for a distance of 300 feet more or less to the centerline of Pinehaven Extension;

Thence continuing northerly along a line for a distance of 4,300 feet more or less to a point, said point being the intersection of the current Laurens city limits line and the common property line between current tax map #'s 906-07-06-01, 356-00-00-01 and 326-00-00-25;

Thence continuing in a westerly direction along the Laurens city limits line and the property line of current tax map # 906-07-06-01 and following the Laurens city limits line along the property line of current tax map #'s 906-06-01-01, 906-06-01-42, 906-06-01-31, 906-01-02-55 and 326-00-00-

 CPW  LCWSC

- 2 -

LCPW 0596

46 to a point, said point being the intersection between current tax map #'s current tax map #'s 906-01-02-55 and 326-00-00-46 and the centerline of Stagecoach Road;

Thence northerly along the centerline of Stagecoach Road for a distance of 1,500 feet more or less to a point, said point being the intersection of the centerline of Stagecoach Road and the projected common property line between current tax map #'s 906-01-01-20 and 326-00-00-64;

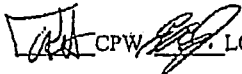
Thence southwesterly, following the current city limits line and the southern property line of current tax map # 906-01-01-20 and following the southeastern property line of Double Brook Sub-Division for a distance of 3,750 feet more or less to a point said, point being the intersection of the property line between current tax map #'s 326-00-00-75 and 906-21-01-02 and following the Laurens city limits line to a point said, point being the intersection of the common property line between current tax map #'s 906-21-01-02 and 927-00-00-12 and the centerline of Dirty Creek;

Thence turning northerly, following the centerline of Dirty Creek and the Laurens city limits line and the western property line of current tax map # 906-21-01-02; 906-21-01-01, 326-00-00-48, 906-21-01-07 and 906-21-01-10 said line being the centerline of Dirty Creek to a point, said point being the intersection of the property lines between current tax map #'s 297-00-00-10, 296-00-00-02 and 296-00-00-03;

Thence turning in a northeasterly direction along the common property line between current tax map #'s 296-00-00-03, 325-00-00-10 and 296-00-00-04 and continuing along said property line to the centerline of US Highway 76 (West Main Street);

Thence turning easterly along the centerline of US Highway 76 (West Main Street) for a distance of 2,800 feet more or less to a point, said point being the centerline of West Main Street and the western property line of current tax map # 325-00-00-14 ;

Thence continuing northerly along the property line of current tax map # 325-00-00-14 for a distance of 2,250 feet more or less to a point, said point being on the property corner between current tax map #'s 325-00-00-14, 324-00-00-08 and 325-00-00-15;

 CPW LCWSC

- 3 -

LCPW 0597

LCPW 0598

46 to a point, said point being the intersection between current tax map #'s current tax map #'s 906-01-02-55 and 326-00-00-46 and the centerline of Stagecoach Road;

Thence northerly along the centerline of Stagecoach Road for a distance of 1,500 feet more or less to a point, said point being the intersection of the centerline of Stagecoach Road and the projected common property line between current tax map #'s 906-01-01-20 and 326-00-00-64;

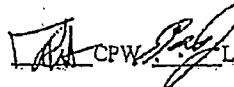
Thence southwesterly, following the current city limits line and the southern property line of current tax map # 906-01-01-20 and following the southeastern property line of Double Brook Sub-Division for a distance of 3,750 feet more or less to a point said, point being the intersection of the property line between current tax map #'s 326-00-00-75 and 906-21-01-02 and following the Laurens city limits line to a point said, point being the intersection of the common property line between current tax map #'s 906-21-01-02 and 927-00-00-12 and the centerline of Dirty Creek;

Thence turning northerly, following the centerline of Dirty Creek and the Laurens city limits line and the western property line of current tax map # 906-21-01-02; 906-21-01-01, 326-00-00-48, 906-21-01-07 and 906-21-01-10 said line being the centerline of Dirty Creek to a point, said point being the intersection of the property lines between current tax map #'s 297-00-00-10, 296-00-00-02 and 296-00-00-03;

Thence turning in a northeasterly direction along the common property line between current tax map #'s 296-00-00-03, 325-00-00-10 and 296-00-00-04 and continuing along said property line to the centerline of US Highway 76 (West Main Street);

Thence turning easterly along the centerline of US Highway 76 (West Main Street) for a distance of 2,800 feet more or less to a point, said point being the centerline of West Main Street and the western property line of current tax map # 325-00-00-14 ;

Thence continuing northerly along the property line of current tax map # 325-00-00-14 for a distance of 2,250 feet more or less to a point, said point being on the property corner between current tax map #'s 325-00-00-14, 324-00-00-08 and 325-00-00-15;

 CPW  LCWSC

- 3 -

LCPW 0599

Thence turning southeasterly for a distance of 800 feet more or less to a point then northerly along a common property line between current tax map #'s 325-00-00-14, 324-00-00-08, 324-00-00-01 and 323-00-00-138 for a total distance of 5,800 feet more or less to a point, said point being the intersection of current tax map #'s 323-00-00-138, 323-00-00-29 and 324-00-00-08;

Thence turning northeasterly along the common property line between current tax map #'s 323-00-00-29 and 323-00-00-138 and continuing for a distance of 1,850 feet more or less to a point, said point being on the common property line between current tax map #'s 323-00-00-31 and 323-00-00-16;

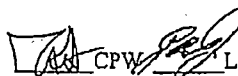
Thence turning northerly along the property line between current tax map #'s 323-00-00-31 and 323-00-00-16 for a distance of 450 feet more or less to a point, said point being on the southeast corner of current tax map # 323-00-00-19 and continuing on a common line between current tax map #'s 323-00-00-19 and 232-00-00-136 to southwest corner of current tax map # 323-00-00-19;

Thence following the property line of current tax map # 323-00-00-19 in a northeasterly direction to a point, said point being a common property corner of current tax map #'s 323-00-00-39, 323-00-00-19 and 323-00-00-40;

Thence turning northwesterly along the common property line between current tax map #'s 323-00-00-39 and 323-00-00-40 to a point, said point being the intersection of the common property line between current tax map #'s 323-00-00-39 and 323-00-00-40;

Thence turning northeasterly then northwesterly along the common property line between current tax map #'s 323-00-00-40 and 323-00-00-20 to the centerline of Whelon Road;

Thence northeasterly along the centerline of Whelon Road to the southern right-of-way line of Narnie Road;

 CPW  LCWSC

- 4 -

LCPW 0600

Thence continuing south along the southern right-of-way line of Narnie Road to a point, said point being the projected common property line between current tax map #'s 323-00-00-11 and 323-00-00-14;

Thence northeasterly along the common property line between current tax map #'s 323-00-00-11 and 323-00-00-14 crossing the right-of-way of the Carolina Piedmont Railroad to the northern right-of-way line of SC Highway 14;

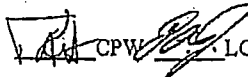
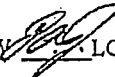
Thence southeasterly along the northern right of way line of SC Highway 14 for a distance of 975 feet more or less to a point, said point being on the current Laurens city limits line and the intersection of the northern right-of-way line of SC Highway 14 and the southern property line of current tax map # 323-00-00-92;

Thence continuing northeasterly along said southern property line of current tax map #'s 323-00-00-92 to a point, said point being the intersection of the southern property line of current tax map #'s 323-00-00-92 and 352-00-00-03;

Thence continuing along the current Laurens city limits line and the southeastern boundary line of current tax map # 352-00-00-03 to a point, said point being the point of intersection of the property line between current tax map #'s 352-00-00-03, 352-00-00-16 and 906-02-02-52;

Thence turning southeasterly along the said property line between current tax map #'s 906-02-02-52 and 352-00-00-16 and following the Laurens city limits line for a distance of 350 feet more or less to a point then turning easterly and following a line for 650 feet more or less to the centerline of an unnamed tributary flowing easterly toward Little River.

Thence following the centerline of said unnamed tributary toward Little River for a distance of 2,250 feet more or less to a point, said point being the intersection of the centerline of unnamed tributary and current tax map #'s 352-00-00-16 and 382-00-00-03;

 CPW  LCWSC

- 5 -

LCPW 0601

Thence continuing northeasterly along common property line between current tax map #'s 352-00-00-16 and 383-00-00-003 to a point, said point being the intersection between current tax map #'s 352-00-00-16, 383-00-00-00- and 382-00-00-02;

Thence southeasterly along the common property line between current tax map #'s 382-00-00-02 and 383-00-00-003 to a point, said point being the southwestern corner of current tax map # 382-00-00-03;

Thence northeasterly along the common property lines of current tax map #'s 382-00-00-02 and 382-00-00-03 for a distance of 4,500 feet more or less to a point, said point being the intersection of the common property line of current tax map #'s 382-00-00-02 and 382-0000-03 and the southern property line of current tax map # 382-00-00-01;

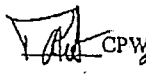
Thence following the southern property line and western property line of current tax map # 382-00-00-01 for a distance of 4,250 feet more or less to its intersection with the southern property line of current tax map # 381-00-00-10;

Thence westerly along the southern property line of current tax map # 381-00-00-10 for a distance of 850 feet more or less to a point, said point being the southwestern corner of the current tax map # 381-00-00-10;

Thence northerly along the western property line of current tax map #'s 381-00-00-10 and 381-00-00-13 to a point, said point being the intersection with the southern property line of current tax map # 381-00-00-16 and the western property line of current tax map # 381-00-00-13;

Thence easterly and northeasterly along the southern property line of current tax map # 381-00-00-16 to the intersection of the western right-of-way line of Interstate Highway 385;

Thence southeasterly along the right-of-way of Interstate Highway 385 for a distance of 2,500 feet more or less to a point, said point being the intersection of the right-of-way line Interstate Highway 385 and a southwesterly projection of the western property line of current tax map # 411-00-00-02;

 CPW  LCWSC

- 6 -

LCPW 0602

Thence northeasterly along the western property line of current tax map #'s 411-00-00-02 and 411-00-00-11 to the northwestern corner of current tax map # 411-00-00-11;

Thence southeasterly along the northern property line of current tax map # 411-00-00-11 and a projection thereof to a point, said point being on the eastern right-of-way line of US Highway 221 and the western property line of current tax map # 411-00-00-17;

Thence northerly along the right-of-way line of US Highway 221 for a distance of 380 feet more or less to the northern property line of current tax map # 411-00-00-10;

Thence easterly along the northern property line of current tax map # 411-00-00-10 to the western property line of current tax map # 411-00-00-13;

Thence southerly along the western property line of current tax map # 411-00-00-13 and a projection thereof to the southern right-of-way line of Honey Bee Drive;

Thence easterly along the southern right-of-way line of Honey Bee Drive to the eastern property line of current tax map # 411-00-00-06;

Thence southwesterly along the eastern property line of current tax map #'s 411-00-00-06 and 411-00-00-14 to its intersection with the northern right-of-way line of a ramp of Interstate Highway 385;

Thence along the right-of-way line of Interstate Highway 385 in a easterly and southerly direction to a point, said point being the intersection of a line 1,000 feet more or less east of the right-of-way line of US Highway 221 and the northern right-of-way line of Interstate Highway 385;

Thence continuing southerly along a line generally parallel to US Highway 221 to the southern right-of-way line of Interstate Highway 385;

 CPW  LCWSC

- 7 -

LCPW 0603

Thence southeasterly along the southern right-of-way line of Interstate Highway 385 for a distance of 3,450 feet more or less to a point, said point being the intersection of the southern right-of-way line of Interstate Highway 385 and the common property line between current tax map #'s 412-00-00-08 and 441-00-00-15 (412-00-00-08 being the Wal-Mart Distribution Center);

Thence southwesterly along the common property line between current tax map # 412-00-00-08, 441-00-00-15 and 441-00-00-16 to the northern right-of-way line of Vern Cora Road;

Thence westerly along the northern right-of-way of Vern Cora Road for a distance of 3,100 feet more or less to a point, said point being the intersection of the northern right-of-way line of Vern Cora Road and the projected eastern property line of current tax map # 412-00-00-15;

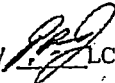
Thence southerly along the common property line between current tax map #'s 412-00-00-15 and 412-00-00-76 to a point, said point being the southwestern corner of current tax map # 412-00-00-76;

Thence easterly along the southern property line of current tax map # 412-00-00-76 for a distance of 550 feet more or less to a point, said point being the intersection of current tax map #'s 412-00-00-76, 412-00-00-79 and 412-00-00-80;

Thence southerly along said property line between current tax map #'s 412-00-00-79 and 412-00-00-80 to a point, said point being the intersection of the eastern property line of current tax map # 412-00-00-79 and the northern property line of current tax map # 412-00-00-18;

Thence easterly along the northern property line of current tax map # 412-00-00-18 for a distance of 1,000 feet more or less to a point, said point being the northeastern corner of current tax map # 412-00-00-18;

Thence southerly along said eastern property line of current tax map #'s 412-00-00-18 and 412-00-00-19 for a distance of 1,450 feet more or less to a point, said point being the eastern property of

 CPW  LCWSC

- 8 -

LCPW 0604

current tax map # 412-00-00-19 and its intersection with the northern property line of current tax map # 412-00-00-22;

Thence easterly along said property line between current tax map #'s 441-00-00-29 and 412-00-00-22 for a distance of 1,100 feet more or less to a point, said point being the northeastern corner of current tax map # 412-00-00-25;

Thence southerly along said eastern property line of current tax map # 412-00-00-25 for a distance of 1,350 feet more or less to a point, said point being the southeastern corner of current tax map # 412-00-00-75;

Thence westerly along the southern property line of current tax map # 412-00-00-75 to a point, said point being the intersection of the southern property line of current tax map # 412-00-00-75 and the common property line between current tax map #'s 412-00-00-85 and 442-00-00-03;

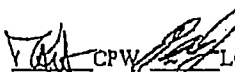
Thence southerly along the eastern property line of current tax map # 412-00-00-85 for a distance of 400 feet more or less;

Thence southeasterly for a distance of 950 feet more or less to the northwest corner of current tax map # 442-00-00-01;

Thence southerly along the western property line of current tax map #'s 442-00-00-01, 442-00-00-02, 442-00-00-81 and 442-00-00-82 to a point, said point being the southwest corner of current tax map # 442-00-00-82;

Thence southeasterly along the southern property line of current tax map # 442-00-00-82 to the western right-of-way line of Fleming Mill Road;

Thence southerly along Fleming Mill Road crossing Lee Carey Road to the southwest corner of current tax map # 442-00-00-78;

 CPW  LCWSC

- 9 -

LCRW 0605

Thence southeasterly along the property line between current tax map #'s 442-00-00-78 and 442-00-00-106 for a distance of 900 feet more or less to the northeastern corner of the current tax map # 442-00-00-106;

Thence southwesterly along the property line between current tax map #'s 442-00-00-106 and 442-00-00-125 for a distance of 100 feet more or less to a point;

Thence southeasterly along the property line between current tax map #'s 442-00-00-106; 442-00-00-125 and 442-00-00-123 to a point, said point being the intersection of the property line of current tax map #'s 442-00-00-18 and 442-00-00-106;

Thence easterly along said property line between current tax map #'s 442-00-00-18, 442-00-00-19 and 442-00-00-123 for a distance of 350 feet more or less to a point, said point being a property corner of current tax map #'s 442-00-00-19; 442-00-00-92 and 442-00-00-105;

Thence continuing southeast and northeast along the property line between current tax map #'s 442-00-00-105, 442-00-00-19, 442-00-00-20 and 442-00-00-95 to the centerline of SC Highway 49;

Thence southeasterly along the southern right-of-way line of Lee Carey Road and Northside Church Road for a distance of 1,250 feet more or less to a point, said point being the intersection of Northside Church Road and current tax map # 442-00-00-65;

Thence southwesterly along the property line of current tax map #'s 442-00-00-60, 442-00-00-65 and 442-00-00-61 for a distance of 1,250 feet more or less to a point;

Thence generally in a direction southeasterly along the southern property line of current tax map # 442-00-00-63 for a distance of 1,850 feet more or less to a point, said point being a common property corner between current tax map #'s 442-00-00-63, 442-00-00-73 and 443-00-00-21;

 CPW  LCWSC

- 10 -

LCPW 0606

Thence southerly along the property line between current tax map #'s 443-00-00-21 and 442-00-00-73 to a point, said point being the intersection of the common property line of current tax map #'s 443-00-00-21 and 442-00-00-73;

Thence southeasterly and diagonally across the CSX right-of-way line for a distance of 3,400 feet more or less to a point, said point being the intersection of the southern right-of-way line of the CSX tracks and the property line of the line between current tax map #'s 443-00-00-01, 472-00-00-37 and 472-00-00-13;

Thence southerly along eastern property line of current tax map # 443-00-00-01 and for a distance of 1,200 feet more or less to the northern property line of current tax map # 472-00-00-43;

Thence easterly along the northern property line of current tax map #'s 442-00-00-43 and 442-00-00-44 to the eastern property line of current tax map # 472-00-00-44;

Thence southerly along the eastern property line of current tax map # 472-00-00-40 to the centerline of Fleming Street Extension;

Thence westerly along the centerline of Fleming Street Extension to the intersection of Fleming Street Extension and Old Airport Road;

Thence continuing in a southerly direction along the centerline of Old Airport Road for a distance of 3,700 feet more or less to a point, said point being the intersection of the centerline of Old Airport Road and a projection of the property line between current tax map #'s 444-00-00-27 and 474-00-00-74;

Thence southwesterly along said property line between current tax map #'s 444-00-00-27 and 474-00-00-74 and continuing along the common property line between current tax map #'s 444-00-00-26, 444-00-00-23, 474-00-00-74, 474-00-00-71 and 474-00-00-63 for 1,050 feet more or less;

 CPW  LCWSC

- 11 -

LCPW 0607

Thence westerly along a line said line being the property line between current tax map #'s 444-00-00-23 and 474-00-00-40 to a point, said point being a point on the Laurens city limits and the intersection of the property lines between current tax map #'s 474-00-00-40, 444-00-00-10 and 906-20-01-76;

Thence following the Laurens city limits line in a southwesterly direction to a point, said point being the southwestern property corner of current tax map # 906-20-01-75;

Thence easterly along the common property line between current tax map #'s 906-20-01-67; 444-00-00-60 and 474-00-00-40 for a distance of 850 feet more or less;

Thence southwesterly along the common property line between current tax map #'s 444-00-00-60 and 444-00-00-61 to the intersection of current tax map #'s 444-00-00-61, 444-00-00-60 and 444-00-00-62;

Thence easterly along a common property line between current tax map #'s 444-00-00-61; 444-00-00-62 and 444-00-00-63 to a point, said point being the intersection of current tax map #'s 444-00-00-63, 444-00-00-61 and 444-00-00-64;

Thence southwesterly along said property line between current tax map #'s 444-00-00-63 and 444-00-00-64 to a point, said point being the intersection of current tax map #'s 444-00-00-63, 444-00-00-64 and 906-20-01-94;

Thence southeasterly continuing along the Laurens city limits line for a distance of 200 feet more or less;

Thence continuing southerly along the common property line between the current tax map #'s 444-00-00-64 and 906-20-01-94 to the centerline of US Highway 76;

Thence westerly along the centerline of US Highway 76 and the Laurens city limits line to the common property line between current tax map #'s 444-00-00-67 and 906-20-01-84;

 CPW LCWSC

- 12 -

LCPW 0608

Thence continuing along the Laurens city limits line and the common property line between current tax map #'s 444-00-00-67; 444-00-00-68 and 906-20-01-84 to the intersection with the northern property line of current tax map # 906-20-01-77;

Thence continuing along the common property line between current tax map #'s 906-20-01-77; 444-00-00-68 and 474-00-00-82 and the Laurens city limits line to a point, said point being the intersection of the property lines between current tax map #'s 906-20-01-77, 474-00-00-82, 474-00-00-04 and 445-00-00-67;

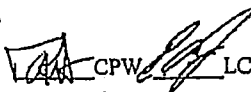
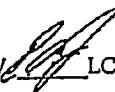
Thence southwesterly along the southern property line of current tax map # 906-20-01-77 and the Laurens city limits line following said Laurens city limits line to a point, said point being the intersection of the property line of current tax map #'s 906-20-01-77 and the centerline of east Jerry Road;

Thence following the centerline of east Jerry Road and the Laurens city limits line for a distance of 1,150 feet more or less to a point, said point being the intersection of the centerline of east Jerry Road and the common property line between current tax map #'s 906-20-01-82 and 445-00-00-60;

Thence following said property line between current tax map #'s 906-20-01-82 and 445-00-00-60 in an easterly direction to a point, said point being the southeastern corner of current tax map # 445-00-00-60;

Thence in a northerly direction following the western property line of current tax map #'s 906-20-01-77 to the intersection of current tax map #'s 906-20-01-77, 906-20-01-88 and 445-00-00-74;

Thence turning northwesterly on a line parallel to the common property line between current tax map #'s 445-00-00-74 and 906-20-01-88 to a point 100 feet more or less east of the centerline of SC Highway 127 By-Pass;

 CPW  LCWSC

- 13 -

LCPW 0609

Thence in a southwesterly direction along a line 100 feet more or less east of the centerline of SC Highway 127 By-Pass following the Laurens city limits to the centerline of east Jerry Road;

Thence north following the centerline of east Jerry Road in a northerly direction for a distance of 450 feet more or less to a point, said point being the intersection of the property line between current tax map #'s 906-20-01-89, 445-00-00-55 and 444-00-00-40;

Thence in a westerly direction along the property line between current tax map #'s 445-00-00-55 and 444-00-00-40 to a point;

Thence southwesterly following the property line between current tax map #'s 906-20-01-35 and 444-00-00-45 for a distance of 800 feet more or less to a point, said point being the intersection of the property lines dividing current tax map #'s 444-00-00-45, 444-00-00-43, 445-00-00-52 and 906-20-01-35;

Thence in a northwesterly direction along the property line between current tax map #'s 444-00-00-43 and 906-20-01-35 for a distance of 1,400 feet more or less and following the Laurens city limits line to a point, said point being on the intersection of current tax map #'s 444-00-00-41, 906-20-01-35 and 444-00-00-43;

Thence in a southwesterly direction meandering along a line between current tax map #'s 444-00-00-41 and 444-00-00-43 to a point, said point being the intersection of current tax map #'s 444-00-00-43; 444-00-00-44 and 444-00-00-41;

Thence turning in a southerly direction along the common property line between current tax map #'s 444-00-00-43 and 444-00-00-44 for a distance of 850 feet more or less to a point, said point being the intersection of current tax map #'s 444-00-00-44, 445-00-00-52 and 444-00-00-43;

Thence in a westerly direction along the common property line between current tax map #'s 444-00-00-44 and 445-00-00-52 to a point, said point being the intersection of the property line between current tax map #'s 444-00-00-44 and 445-00-00-52 and the Laurens city limits;

 CPW  LCWSC

- 14 -

LCPW 0610

Thence following the Laurens city limits line in a southwesterly direction to the centerline of Little River;

Thence following the centerline of Little River meandering in a southeasterly and southerly direction for a distance of 2,000 feet more or less to a point, said point being on Little River at the intersection of the property line between current tax map #'s 416-01-02-83 and 416-01-01-09;

Thence in a southwesterly direction along the property line between current tax map #'s 416-01-02-83 and 416-01-01-09 for a distance of 550 feet more or less to a point, said point being the intersection of current tax map #'s 416-01-01-09, 416-01-02-15 and 416-01-02-83;

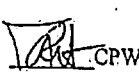
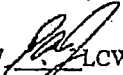
Thence southwesterly along the common line between current tax map #'s 416-01-02-15 and 416-01-01-09 to a point said point being the northwest corner of current tax map # 416-01-01-27;

Thence continuing southeasterly along the property line between current tax map #'s 416-01-01-27 and 416-01-01-09 for 200 feet more or less;

Thence in a southwesterly direction along the property lines of current tax map #'s 416-01-01-27; 416-01-01-11 and Sherman Drive for a distance of 550 feet more or less;

Thence southeasterly along said property line between current tax map #'s 416-01-01-12 and 416-01-01-10 continuing in a southwesterly direction along the southeastern property lines of current tax map #'s 416-01-01-12, 416-01-01-14, 416-01-01-16, 416-01-01-18, 416-01-01-20, 416-01-01-21 and 416-01-01-28 to a point, said point being the intersection of current tax map #'s 416-01-01-28, 416-01-01-29 and 416-01-01-31;

Thence in a southeasterly direction along said property line between current tax map #'s 416-01-01-31 and 416-01-01-29 to a point, said point being the intersection current tax map #'s 416-01-01-31, 417-00-00-10 and 416-01-01-29;

 CPW  LCWSC

- 15 -

LCPW 0611

Thence continuing southwesterly along the property lines between current tax map #'s 416-01-01-29, 416-01-01-30 and 417-00-00-10 to a point, said point being the intersection of the centerline of South Harper Street Extension and the previously described property line;

Thence northwesterly along the centerline of South Harper Street Extension for a distance of 550 feet more or less to a point, said point being the intersection of South Harper Street Extension and the projected property line between current tax map #'s 417-00-00-01 and 387-00-00-35;

Thence in a southwesterly direction along said property line between current tax map #'s 417-00-00-01 and 387-00-00-35 for a distance of 1,200 feet more or less to a point, said point being the southern property corner of current tax map # 387-00-00-31;

Thence northerly along the western property line of current tax map # 387-00-00-31 to its intersection with the southern property line of current tax map # 387-00-00-29;

Thence following the southern property line and western property lines of current tax map # 387-00-00-29 to a point, said point being the intersection of current tax map #'s 387-00-00-28; 387-00-00-29 and 417-00-00-01;

Thence southwesterly along the line between current tax map #'s 387-00-00-28, 387-00-00-27 387-00-00-26 and 417-00-00-01 for a distance of 750 feet more or less to the intersection with the centerline of Burnt Mill Creek;

Thence northwesterly along the centerline of Burnt Mill Creek for a distance of 5,000 feet more or less to the centerline of US Highway 221, the point of beginning.

EXISTING customers of LCWSC within the agreed upon CPW service area, now being provided water and/or sewer service by Laurens County Water and Sewer Commission, will continue to receive service from LCWSC.

EXISTING and future customers seeking new, additional, or expanded water and/or sewer service within the CPW service area shall receive said services from the CPW. However, in the event the CPW cannot or will not provide said services, then with approval of the CPW the said services may be provided by LCWSC.

 CPW  LCWSC

- 16 -

LCPW 0612

In the event a portion of the LCWSC service area is annexed into the City of Laurens, the transfer of service rights shall be pursuant to §§5-3-310 et seq., South Carolina Code of Laws (1968) as amended.

IN WITNESS WHEREOF, the undersigned have hereunto set their Hands and Seals in duplicate originals this 11th day of November 2003.

In the presence of:

ATTEST:

By: Coleman F. Smoak
Its General Manager

Signees:

Commission of Public Works (Seal)

By: Thomas K. Hardy
Thomas K. Hardy
Its Chairman of Board of Commissioners

ATTEST:

By: Marvin R. Weathers
Marvin R. Weathers
Its Secretary

Laurens County Water And Sewer Commission (Seal)

By: Erskine A. Jacks, Sr.
Erskine A. Jacks, Sr.
Its Chairman

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

ACKNOWLEDGEMENT

I, Robert W. Whitesides, Notary Public for the State of South Carolina, do hereby certify that the Commission of Public Works by Thomas K. Hardy its Chairman, attested by Coleman Smoak, its General Manager and Laurens County Water and Sewer Commission by Erskine A. Jacks, Sr., its Chairman, attested by Marvin R. Weathers, its Secretary, personally appeared before me this day and acknowledge the due execution of the forgoing instrument.

Subscribed to and sworn to before me this 21st day of October 2004 ~~November 2003~~.

Robert W. Whitesides (Seal)
Notary Public for South Carolina
My Commission Expires: 11-04-08

ROBERT W. WHITESIDES
NOTARY PUBLIC FOR S.C.
MY COMMISSION EXPIRES 11-04-08

CPW LCWSC

- 17 -

LCPW 0613

10

10

LAURENS COMMISSION OF PUBLIC WORKS
JOB DESCRIPTION, MAY, 1993

JOB TITLE: GENERAL MANAGER
MANAGEMENT DEPARTMENT

GENERAL STATEMENT OF JOB

Given broad objectives and directed by the Commissioners, is responsible for the efficient and economical operation of the Laurens Commission of Public Works through the active management of all phases of the Commission's business and operations. Provides leadership and direction for all personnel; plans overall activities and projects; and develops goals, objectives, and processes for all Commission projects and programs. Ensures the observance of the Commission's safety program.

SPECIFIC DUTIES AND RESPONSIBILITIES

ESSENTIAL JOB FUNCTIONS

Manages and directs all activities, programs, projects and plans for the Laurens CPW.

Supervises Commission staff which involves instructing, assigning, planning and reviewing work of others; maintaining standards; coordinating activities; acting on employee problems; selecting new employees; and approving transfers/promotions, discharges and salary increases and disciplinary actions.

Develops and carries out policies, plans and programs as set forth by Commissioners.

Remains abreast of current events and technological developments with the utility field and researches applications of developments to existing systems and future planning.

Follows legislation related to utility field and governmental funding.

Works with economic development divisions of local, state and national organizations in order to promote and enhance the area's economic development.

Maintains an awareness of population, commercial and industrial growth in proportion to utility needs and future planning.

Attends governmental meetings as needed; takes active interest in professional associations.

Consults with Commission engineers and other providers of professional services as needed.

Insures the availability of continuing educational programs for the growth and advancement of personnel.

Operates and maintains a variety of equipment and machinery including computer, fax machine, copier, radio equipment, calculator, SCADA system, vehicle, and various tools and supplies.

(c) Griffith/Archer, 1992

EXHIBIT	8
WITNESS	Colerain Smock
DATE	2-16-2012
TARA T. SCOTT & ASSOCIATES	

LCPW 2166

11

11

Page 8

v,
you

used
ur gas
Carey

on

dary,
int in

ion of

are
might

Page 9

een
Heath
Carey
that

hich is
it with
at?

n Inn

r
e -
but I
letters
y. I

Script@

Page 10

1 don't recall this one.
2 MR. HOLMES: Okay. Off the record.
3 (Off-the-record.)
4 BY MR. HOLMES:
5 Q. We are back on. I'm now going to show
6 you a letter dated November 25th, 1992, that's
7 marked as Plaintiff's Exhibit Number 4 that appears
8 to have been written by Mr. Coleman Smoak to Carey
9 Elliott. Let me let you take a look at that for a
10 moment.
11 A. Okay.
12 Q. Do you recall ever having seen that
13 letter?
14 A. I do not.
15 Q. It mentions that there was a -- that
16 Mr. Smoak was in the process of preparing a
17 resolution for adoption by both the governing
18 bodies. Do you recall the Fountain Inn City Council
19 ever discussing a resolution about a territorial
20 boundary agreement with the Laurens Commission of
21 Public Works?
22 A. I do not.
23 Q. Okay. Is the city council or was it
24 at that time divided into committees?
25 A. Yes.

Page 11

1 Q. Do you remember what the committees
2 were?
3 A. There certainly was a gas committee.
4 I think there was also a police committee and a fire
5 committee, but there was a gas committee.
6 Q. Okay. And what would have been the
7 protocol for matters coming before city council that
8 would have involved the jurisdiction, let's say, of
9 a committee?
10 A. Anything of this nature normally would
11 have gone to the committee first. They would have
12 reviewed, talked about, discussed and come back to
13 present a recommendation to the full council. And
14 then the council would have voted yea or nay at the
15 meeting. Barry Woods, as I recall, was the gas
16 committee chairman at that time. And Barry was very
17 active and very involved and I know he would have
18 seen this and brought it back to the council if this
19 had occurred. And I do not remember ever seeing a
20 boundary map or any sort of resolution.
21 Q. Did you attend any other meetings or
22 participate in any other discussions with either
23 Laurens Commission of Public Works or the Fountain
24 Inn City Council --
25 A. No.

Page 12

1 Q. -- about a territorial boundary
2 agreement?
3 A. No.
4 Q. All right. Did you have -- would you
5 have had the authority to approve a territorial
6 boundary agreement?
7 A. No.
8 Q. Would Mr. Elliott?
9 A. No.
10 Q. Who did Mr. Elliott report to?
11 A. To me. To the mayor.
12 Q. All right. And Sam Moore as the gas
13 manager, who did he report to?
14 A. He reported to Mr. Elliott.
15 MR. HOLMES: Okay. Thank you. Answer
16 any questions Mr. Ellis may have.
17 THE DEPONENT: Sure.
18 EXAMINATION
19 BY MR. ELLIS:
20 Q. Thank you. Mr. Mayor, my name is
21 Bernie Ellis, and I'm representing the Laurens
22 Commission of Public Works in this matter. I want
23 to show you a document, and we'll mark this as an
24 exhibit to your deposition. I do not have other
25 copies of it right now, but I'll get them. I wasn't

Page 13

1 planning on using that this morning but I have it
2 now.
3 (PLF. EXH. 16, 1994 Letter, was marked for
4 identification.)
5 BY MR. ELLIS:
6 Q. What I've shown you is a letter in
7 1994 from Carey Elliott, I believe, to Coleman
8 Smoak --
9 A. Right.
10 Q. -- in which I believe it's fair to
11 characterize this as Mr. Elliott is asking that the
12 Laurens CPW comply with the service area agreement
13 of November 11, 1992. He states: I have been
14 informed that Laurens CPW has recently provided gas
15 service via farm tap from your high-pressure line to
16 a new residence near the corner of Andrews Road and
17 Green Pond Road. We realize that this is not an
18 intentional violation of our agreement. However, we
19 would appreciate your consideration in this regard.
20 And I believe you're copied on that.
21 A. Right.
22 Q. That's in 1994. And, again, once we
23 make copies I would like to mark this as an exhibit
24 to your deposition.
25 A. Sure.

12

12

1 EXAMINATION RESUMED BY MR. ELLIS:

2 Q. Mr. Elliott, I've just shown you a document we've
3 marked as Exhibit 5 which is a letter from Coleman
4 Smoak dated November 25, 1992 back to you stating
5 that he was pleased to learn that the map he sent
6 - it says on October 27, 1992 reflects your
7 understanding of the reference boundary. I like
8 to clear these things up. I believe the letter
9 that you wrote was actually dated - or the letter
10 he sent to you was actually dated November 11,
11 1992. Is that right?

12 A. That's correct.

13 Q. There was never any doubt that the map that is on
14 Exhibit 3 was what both sides understood to be the
15 boundary; right?

16 A. That's correct.

17 Q. He says, "I am in the process of preparing a
18 resolution for adoption by both of our governing
19 bodies." To your knowledge, was a resolution ever
20 adopted?

21 A. To my knowledge I'm not aware of any resolution.

22 Q. What was your understanding at the time? I
23 understand you're not here to give a legal opinion
24 or anything like that, but what was your
25 understanding at the time of a need for a

Tara Scott and Associates
864-992-9544

1 resolution?

2 A. To make it a legal, binding agreement.

3 Q. As I understood, though, the purpose of this
4 discussion in 1992 - the purpose of this agreement
5 in 1992 was to clarify that both natural gas
6 systems would understand where they were going to
7 go and not go; right.

8 MR. HOLMES:

9 Object to the form of the question.

10 A. That's correct.

11 EXAMINATION RESUMED BY MR. ELLIS:

12 Q. In fact, the City of Fountain Inn, through you and
13 Mayor Davis, are the ones who initially asked for
14 this map to be drawn. This territorial agreement.

15 A. To the best of my knowledge we did.

16 Q. Did you then, after that time, seek to observe
17 that territorial boundary in Fountain Inn?

18 A. We did.

19 Q. Flesh that out for me just a little bit. How did
20 you observe it? Did you have customers come to
21 you from the LCPW side and say, "We can't serve
22 you", and so forth?

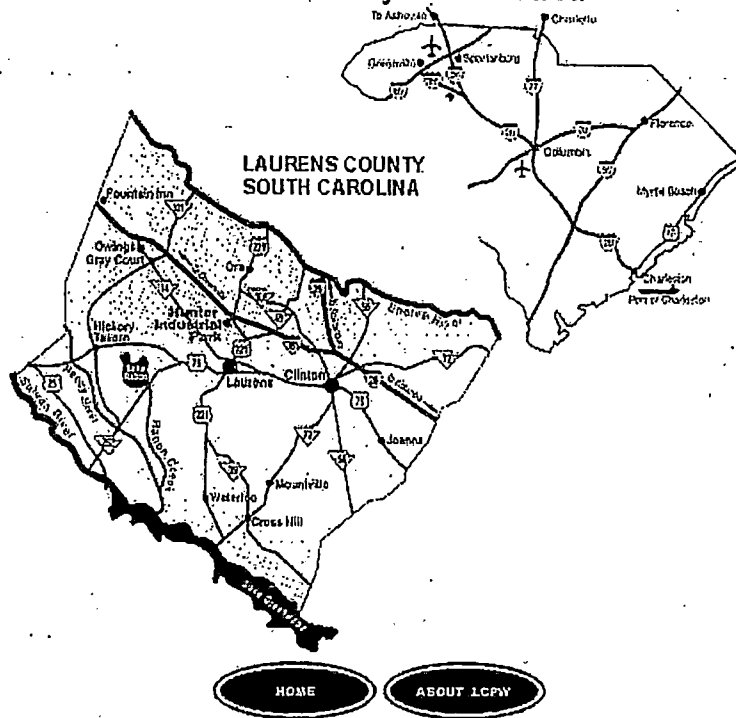
23 A. I don't recall that particular situation where we
24 had a customer come to us. We did notice, in
25 1994, where Laurens CPW was serving a customer, I

Tara Scott and Associates
864-992-9544

13

18

Laurens County Service Area



14

14



[Home](#) [About Us](#) [Customer Service](#) [Community Involvement](#) [Safety & Energy Savings](#) [Appliance Shop](#) [Careers](#) [Contact Us](#)

Our Philosophy/Values

CNNGA is committed to the safety of the public and protection of the environment. We are passionate about providing natural gas in a safe, efficient, and environmentally responsible manner. We are dedicated to maintaining uninterrupted service to our customers who depend on natural gas to fuel their homes and businesses.

At CNNGA, safety always is first. Our pipelines are designed and constructed using the latest technology and the highest safety standards. CNNGA operates our pipelines in accordance with all state and federal regulations, and follows a rigorous testing schedule for equipment, pipe, and safety devices. We monitor our pipelines through a state-of-the-art control center 24 hours a day, 365 days a year.

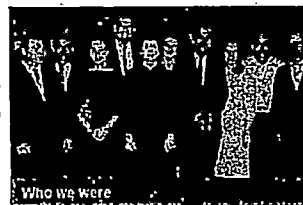
Service Areas

The shading illustrates the approximations of CNNGA's present and future service areas. To determine if you are located directly in our service area, please [contact us](#).



Who We Are

Clinton Newberry Natural Gas Authority (CNNGA) has been a member of the S.C. community since 1952, when we began supplying natural gas services to Laurens and Newberry counties. We also began providing services to Southern Spartanburg County in the mid 1980s.



CNNGA currently is expanding its services to the Lake Murray and Lake Greenwood areas in these counties as well.

CNNGA is proud of its reputation of providing safe, reliable and competitively priced natural gas services to residential, commercial and industrial customers. We provide clean, efficient, environmentally friendly natural gas for heating homes and businesses, cooking, water heating, gas fireplaces, and many other uses to about 13,000 customers.

Our Team

CNNGA's employees are highly trained, experienced and dedicated to providing superior customer service. From our office staff to our technicians in the field, our employees work as a team to ensure prompt, safe, and reliable service to our customers. We strive daily to meet customer requests quickly and efficiently.



Our CNNGA team consists of technicians in the field that provide on-site customer service, meter reading, installation, maintenance, line locations, and capital orders. They are supported by office staff consisting of customer service representatives, accounting, finance, billing, accounts payable, payroll, human resources, purchasing and inventory control personnel.

Locations/Offices





CNNGA operates from two offices located at 1643 Springdale Drive in Clinton, S.C. and 668 Wilson Road in Newberry, S.C.

Office hours are Monday through Friday, 8 a.m. to 4:30 p.m. Telephones are answered until 5 p.m. For customer convenience, a drive-thru window and after-hours night deposit box are available at both locations.

CNNGA closes its offices in observance of the following annual holidays:

- **New Years Day**
- **Martin Luther King Day**
- **Easter** Offices are closed **Good Friday**
- **Memorial Day**
- **Independence Day** July 4
- **Labor Day**
- **Thanksgiving** Offices are closed **Thanksgiving Day** and the **Friday** following
- **Christmas** Offices are closed **Christmas Day** and the day following

If a holiday falls on a Saturday, CNNQA will close its offices on the Friday prior. If a holiday falls on a Sunday, CNNQA will close its offices on the Monday following.

CNNGA Clinton Office
1643 Springdale Drive
PO Box 511
Clinton, SC 29325-0511
Phone - 864.833.1862
Toll Free 800.221.8109
Fax 864.833.6593
Get Map

CNNGA Newberry Office
868 Wilson Road
PO Box 757
Newberry, SC 29108
Phone - 803.276.1550
Toll Free 800.221.8109
Fax 803.276.9096
Get Map

For after-hour emergencies, call:

Laurens/Spartanburg Counties - 864.833.7512
Newberry County - 803.321.2222 or 803.276.2222

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	CIVIL ACTION NO: 2011-CP-30-309
	)	
Commissioners of Public Works of the	)	
City of Laurens, South Carolina, also	)	
Known as the Laurens Commission of	)	
Public Works,	)	PLAINTIFF'S PRE-TRIAL BRIEF
	)	
Plaintiff,	)	
vs.	)	
	)	
City of Fountain Inn, South Carolina	)	
	)	
Defendant.	)	
	)	

Plaintiff hereby submits its pre-trial brief.

(1) A concise non-argumentative statement of the facts of the case.

This is a dispute over the right of municipalities to furnish natural gas to customers outside the municipalities' corporate limits in areas that are already being served. S.C. Code Ann. § 5-7-60 allows municipalities to provide services outside their corporate limits by contract, but not within the "designated service area" of another municipality or political subdivision unless permission is granted by the governing body of the other municipality or political subdivision concerned. The statute provides that "designated service area" means an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.

The City of Laurens, through the Laurens Commission of Public Works ("LCPW"), contends that the area that it has served for decades outside the City of Laurens is the City of Laurens' "designated service area" under Section 5-7-60 and that the City of Fountain Inn may not serve natural gas to customers in that area because it is already being served. The area in question is the area on the southern side of the highlighted line of the map on Exhibit 1 (the "Disputed Area").

Since before 1992 until early 2011, the City of Laurens, through the LCPW and the City of Fountain Inn ("Fountain Inn") observed an agreement, never formally ratified, as to the territories each city would serve outside its corporate boundaries. In 2011, Fountain Inn's new gas manager, Mike Pitman, rejected that informal agreement and decided that Fountain Inn should compete for industrial customers in the area served by the LCPW because Fountain Inn now contends that there are no limits on where a municipality may furnish natural gas outside its corporate limits.

(2) An objective statement of the facts in controversy

LCPW believes that, at this point, there are no material facts in controversy. LCPW has the capacity and facilities to furnish and is furnishing natural gas service in the Disputed Area, and provides service to any industrial or residential customer within the Disputed Area who requests it. There is no factual dispute that the agreement described above was not formally ratified, but was generally observed for almost 20 years. There is no dispute that the City of Fountain Inn and the LCPW were intentionally not competing against each other for customers until shortly before this action was filed.

(3) The legal issues involved.

The legal issue involved is the proper interpretation of S.C. Code Ann. § 5-7-60. That statute provides in pertinent part:

Any municipality may perform any of its functions, furnish any of its services... 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.... For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. (Emphasis added). 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.

This dispute is that the LCPW contends that the statute means what it says – that a municipality's designated service area is the area it serves - while Fountain Inn contends that a municipality only has the right to exclude others from providing services within the municipality's corporate limits. In fact, in its motion for summary judgment, Fountain Inn stated: "The disputed territory is outside of both municipal territorial limits. The significance of §5-7-60 is that if Laurens County decided to go into the natural gas business, it would have to obtain the agreement of Fountain Inn and LCPW [footnote omitted]. Section 5-7-60 does not, however, provide LCPW (or Fountain Inn) with the ability to stop the other from providing natural gas service in the county, i.e., outside their respective territorial limits."

If the City of Fountain Inn were correct § 5-7-60, would say:

For the purposes of this section designated service area shall mean the corporate limits of the municipality providing the service.

Or the statute could simply say:

Any municipality may perform any of its functions, furnish any of its services... in areas outside the corporate limits of such municipality by contract... except within the corporate limits of another municipality.

Of course, another possibility would be that the designated service area for a municipality would be an area designated by the county in which the municipality is located, or some other entity. If that were the case, the statute would say:

For the purposes of this section designated service area shall mean the area designated by the county in which the municipality is located [or by the XYZ Commission].

But that is not what the statute says. The statute says, in pertinent part:

For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds

have been applied for as certified by the governing body thereof. (Emphasis added).

As stated in the recent case of *Hudson ex rel. Hudson v. Lancaster Convalescent Center*, --- S.E.2d ----, 2014 WL 60334 (S.C.,2014):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007).

The appellate courts of South Carolina have applied § 5-7-60 as it is written. In *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 321 S.E.2d 258 (1984), the South Carolina Supreme Court held that the Sewer District qualified as a "designated service area" under S.C. Code Ann. § 5-7-60 based upon the Sewer District's affidavit stating that the Sewer District had constructed sanitary sewerage collection lines, transmission lines and treatment facilities to handle the waste water generated by the users of the sewerage system located within the Sewer District, and thus the Sewer District could limit the City of Spartanburg from providing a competing service in the same area. 321 S.E.2d at 261. In other words, it was the fact that the Sewer District had the facilities in place to provide that service that made that area a "designated service area."

One might argue that while *Spartanburg Sanitary Sewer District* establishes that § 5-7-60 means that a "designated service area" is an area in which a service is actually provided or is planned to be provided, that case does not involve a municipality that is providing service outside

its corporate limits attempting to limit another municipality or political subdivision from serving the same area.

In *City of Darlington v. Kilgo*, 393 S.E.2d 376 (1990), the Supreme Court did deal with that issue. In that case, the Cities of Hartsville and Darlington were providing fire protection services by contract in a five-mile radius outside their corporate limits under § 5-7-60. *Id.* at 377 - 78. Darlington County passed an ordinance creating a fire district under S.C. Code Ann. § 4-19-10 to include all unincorporated areas of Darlington County. *Id.* at 377. The Cities of Hartsville and Darlington sued to prevent the fire district from providing fire protection service where the cities were already providing it which included an area outside the corporate limits of those cities. *Id.* In that case the cities relied on § 4-19-10(b) which provides, in pertinent part, that a fire district may not include within its service area:

those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of the fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.

Kilgo, 393 S.E.2d at 378. (emphasis added).

The Supreme Court held that § 4-19-10(b) and § 5-7-60 are not in conflict and that § 4-19-10(b) "protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in absence of an agreement, newly created county fire districts must exclude areas served by cities under contract." *Id.* That service area was defined to be the 5-mile radius around the City of Darlington and the City of Hartsville in which the Cities provided fire protection services. *Id.* at 378.

As with *Spartanburg Sanitary Sewer District*, there is a distinction between *Kilgo* and the case at bar — namely that there was an additional statute providing that a service area is an area in

which a service is being provided. However, the language in § 4-19-10 is materially the same as the pertinent language in § 5-7-60. What is important about *Kilgo* to this case is that under the language of § 5-7-60 and the parallel language in § 4-19-10(b) regarding a service area, the cities had the right to control the provision of a service outside the cities' corporate limits where the cities were already providing that service by contract, and the only requirement for designating that area is that the municipality was serving it. As pointed out in the dissent in *Kilgo*, that area included the entire area in which the service was made available by contract and not just to the customers with whom the cities had existing contracts. *Id.* at 379-382.

Similarly in *Mathis v. Hair*, 594 S.E.2d 851 (2002), the Court of Appeals had to define the meaning of a "service area" for purposes of S.C. Code Ann. § 23-9-420. *Id.* at 852. The Court noted that similar language is used in § 5-7-60 and is defined by the statute to mean an area in which the service is being provided. *Id.* at 854.

Plaintiff submits that the words of the statute and its interpretation by the South Carolina Supreme Court and the Court of Appeals mean that because the LCPW has furnished natural gas in a specific area outside its city limits, that area is its designated service area, and the City of Fountain Inn may not serve customers in that area without an agreement with the LCPW. It has long been the policy of South Carolina that "there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction and privileges." *Wagner v. Smith*, 71 S.E.2d 1 (1952) (internal citations omitted), and § 5-7-60 reflects that policy.

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses to be called and, if available, their address and phone number.

Exhibits:

The LCPW intends to submit the following exhibits:

1. Letter from Coleman Smoak to Carey Elliott dated November 11, 1992.
2. Letter from Carey Elliott to Coleman Smoak dated November 17, 1992.
3. Letter from Carey Elliott to Coleman Smoak dated July 22, 1994.
4. Letter from Coleman Smoak to Carey Elliott dated August 15, 1994.
5. Map showing Laurens/Greenville County Lines; the 1992 Territory Boundary and LCPW Natural Gas lines.
6. Map showing location of Gas Lines and location of ZF.
7. Contract between LCPW and ZF.
8. Resolution No. 11-03 of the Commission of Public Works of the City of Laurens, South Carolina.
9. Any exhibits to depositions in this case.

Witnesses:

1. Dale Satterfield
1219 Gary Street
Clinton, SC 29325
(864) 872-9966
2. Coleman Smoak
121 Village Drive
Greer, SC 29651
(864) 877-9632
3. Scott Heath (likely by deposition)
108 West Warren Street
Suite 300
Shelby, North Carolina 28150
(704) 487-8516
4. John Young
Laurens Commission of Public Works
212 Church St
Laurens, SC 29360
864) 984-3641

(5) **Any unusual problems relating to evidence to be introduced.**

Plaintiff does not anticipate any unusual problems related to evidence to be introduced.

(6) **Any unusual question or matter which should be brought to the attention of the court.**

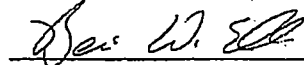
Plaintiff is not aware of any unusual questions or matters which should be brought to the attention of the court.

(7) **Settlement negotiations.**

While discussions have occurred, the nature of this dispute makes settlement difficult.

Respectfully submitted

MCNAIR LAW FIRM, P.A.



Bernie W. Ellis

SC Bar No. 64841

Post Office Box 447

Greenville, South Carolina 29602

Tel. (864) 271-4940

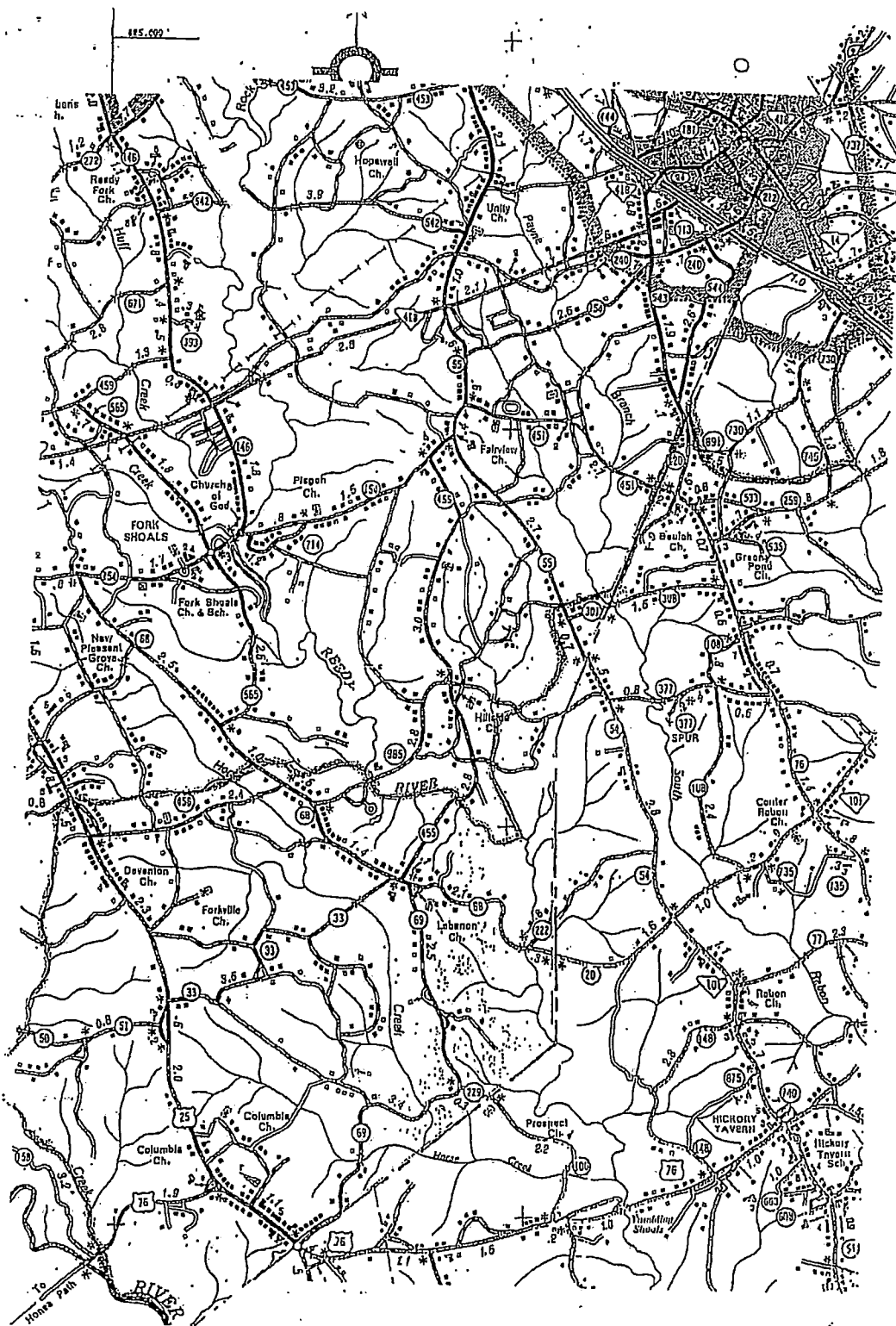
Fax (864) 271-4015

Attorney for Plaintiff

Greenville, South Carolina
March 13, 2014

EXHIBIT 1

(Disputed Area)



STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

PRE-TRIAL BRIEF
OF THE
CITY OF FOUNTAIN INN

Pursuant to Rule 16(c), SCRCP, the Defendant, City of Fountain Inn, South Carolina, would respectfully submit the following pre-trial brief.

1. A concise non-argumentative statement of the facts of the case.

The City of Fountain Inn for many years has owned and operated a natural gas system that provides natural gas to customers both inside and outside its city limits including areas in northern Laurens County. The City of Fountain Inn lies in Laurens and Greenville Counties.

The Plaintiff, the Laurens Commission of Public Works ("LCPW") also operates a natural gas system. LCPW is a municipal entity. LCPW also provides water, sewer and electricity, but does so primarily only within the territorial boundaries of the City of Laurens.

LCPW contends that there is a territorial boundary that arose as a result of a contract between the parties in the early 1990's. LCPW contends that the boundary represents exclusive areas within which each party may provide natural gas.

In the alternative, LCPW contends that the territory within the boundary represents a designated service area and that Fountain Inn may not provide natural gas within the area.

This lawsuit was filed after both Fountain Inn and LCPW bid to provide natural gas to ZF Transmissions, a new industrial customer that built a plant within the Owings Industrial Park that is located just outside of Fountain Inn. LCPW contended that Fountain Inn was prohibited from bidding on the service because of the alleged contract and/or because the Owings Industrial Park is within its designated service area.

Fountain Inn denies that there is a contract establishing a territorial boundary and it denies that LCPW has a designated service area. The city limits of the city of Laurens is 15 miles away from the "disputed area" while it is 3 miles from the city limits of Fountain Inn.

Both LCPW and Fountain Inn are governed by members that are elected (or appointed) to staggered terms of 4 years each.

2. An objective statement of the facts in controversy.

- a. Is there a contract that established a territorial boundary?
 - (i) Was there a meeting of the minds?
 - (ii) Did the manager for either party have the authority to bind the parties?
 - (iii) Did either party take the requisite action to enter into a contract with the other?
 - (iv) If there was a contract, what is the length of its term?

3. The legal issues involved.

a. Contract Claim -- no meeting of the minds.

"South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989); see also *Potomac Leasing Co. v. Otts Mkt., Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct.App.1987) ("It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms."). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997).

Clardy v. Bodolosky, 679 S.E.2d 527, 531, 383 S.C. 418, 425 (S.C.App. 2009)

LCPW relies on a series of letters from 1992 between the managers of Plaintiff's and Defendant's gas departments. Fountain Inn contends that there is no contract. LCPW claims that it had a territorial boundary agreement with Fountain Inn as far back as 1977.

In early 1985, LCPW approached Fountain Inn to discuss a boundary agreement because LCPW was "about to install a new feeder line, a 10-inch natural gas line that would run from [its] tap with Transco, which is up north of Fountain Inn, and run all the way to the City of Laurens." Smoak contended that this new line "was necessary to give [LCPW] a second feeder from Transco...." When asked if any written agreement was reached with Fountain Inn, he stated: "If there were, I don't remember."

In October of 1992 LCPW invited Fountain Inn to a meeting to discuss a territorial boundary. The result of the October 1992 meeting was that Smoak wrote a

letter dated November 11, 1992 to Fountain Inn and attached a map on which he had indicated a boundary. On November 17, 1992, Carey Elliott, the Fountain Inn Natural Gas System Manager, responded in a letter that indicated that the boundary map was what had been discussed. It even stated that it was "in agreement with the Fountain Inn City Council." But the letter also raised an important issue that had not been agreed upon. Mr. Elliott raised the issue of how future annexations might be handled. This is a clear indication that no agreement had been "nailed down."

Almost immediately there were claims that the so called boundary agreement had been violated. Indeed, Smoak admitted that at the time he drew a line on a map, LCPW had customers on Fountain Inn's side of the line that LCPW didn't intend to give up.

There is no term specified in the alleged agreement. According to LCPW, the agreement dates back as far as 1977. Even if it dated back to 1992, the agreement extends for a period longer than the term of officials of either party.

- b. Contract Claim – B. Lack of required adoption of the agreement by the governing bodies.

LCPW is aware that no agreement had been reached in the legal sense. In a letter from Coleman Smoak to Fountain Inn dated November 25, 1992, Mr. Smoak states: "I am in the process of preparing a resolution for adoption by both our governing bodies." Even though LCPW knew that a resolution or some public vote was required to formalize any territorial agreement, no resolution was prepared and neither the LCPW Commission nor the Fountain Inn City Council voted or even discussed a territorial boundary.

- c. Contract claim - No authority in gas managers.

In *Carolina Power & Light Co. v. Darlington County*, 315 S.C. 5; 431 S.E.2d 580

(1993) the Supreme Court ruled that a fire chief did not have the authority to bind the city

to a fire service agreement. The Court held:

In 56 Am.Jur.2d, Municipal Corporations, § 504 at 556 (1971), it states that:

A municipal corporation is not bound by a contract made in its name by one of its officers or by a person in its employ, although within the scope of its corporate powers, if the officer or employee had no authority to enter into such a contract in behalf of the corporation.

In *City of North Charleston v. North Charleston Dist.*, 289 S.C. 438, 346 S.E.2d 712 (1986), this Court held that a person who contracts with a municipality is charged with the knowledge of its limitations and restrictions in making contracts. On the present facts, this rule put CP & L in a position to *either insure that an ordinance or resolution existed*, or at a minimum that a contract was made through the Mayor. Moreover, because there is a large discrepancy in the contract procedures between CP & L and the city's other recipients of fire protection service, there is ample evidence to support the judge's findings. The Fire Chief's lack of authorization from the municipal government, along with the procedural variance, is fatal to the existence of capacity to enter into a contract for fire protection services.

- d. Contract Claim – Ultra Vires.

The Supreme Court determined that a contract with provisions that lasted beyond the term of the city council was an improper delegation of authority in *City of Beaufort v.*

Beaufort-Jasper County Water and Sewer, 325 S.C. 174; 480 S.E.2d 728 (1997). The

Supreme Court stated the facts of that case as follows:

Prior to April 1963, Authority became interested in installing water lines to serve certain Marine Corps facilities located at Parris Island and Beaufort. However, Authority lacked the funds to install the necessary water lines. In order to finance the construction, Authority entered into contracts with Beaufort and Port Royal

whereby Municipalities agreed to purchase from Authority all their water for corporate purposes and for their own residents and customers. These contracts gave Authority the necessary funds for installation of the water lines to serve the Marine Corps. Authority's contract with Beaufort has twice been amended, most recently in 1976. Authority's contract with Port Royal was amended in 1966.

The Court stated that the offending provisions of the contract (the "Contested Clauses") were: "The Authority shall not sell water to be used by persons, private corporations or other municipalities ... in Beaufort County, without the consent of Beaufort and the Town of Port Royal ... unless said City and/or Town refuse or neglect to render such service to such persons, private corporations or other municipalities within a reasonable time after the same has been demanded."

The Court determined, after a lengthy discussion about the length of the contract that: "We uphold the trial court's ruling that the Contested Clauses constitute an unlawful delegation of governmental power, both because the Contested Clauses bind future governing boards and, more importantly, because they give away too much power in themselves." *City of Beaufort v. Beaufort-Jasper County Water and Sewer*, 325 S.C. 174; 480 S.E.2d 728 (1997).

e. Promissory Estoppel.

With regard to the party estopped, the elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, "or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;" (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Southern Dev. Land & Golf Co., v. South Carolina Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993). "As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in

question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.”

Rushing v. McKinney, 370 S.C. 280, 293-94, 633 S.E.2d 917, 924 (S.C. Ct. App. 2006).

LCPW recognized that the only way the parties could be bound to the alleged contract was by a resolution adopted by the Commission and the City Council. That never occurred.

In addition, as the evidence will indicate, almost immediately there were claims that the “agreement” had been breached.

Coleman Smoak, Carey Elliott and Mayor Ben Davis did not have the authority to bind their respective entities. Therefore, Fountain Inn did not make a “promise” by which it could be estopped. There clearly was no “promise” or “concealment of facts” known only to the City of Fountain Inn. LCPW does not maintain that it lacked “knowledge of and the means of knowledge of the truth as to the facts in question.”

f. South Carolina Code Annotated §5-7-60.

The interpretation of this statute is the crux of the case. Can LCPW unilaterally declare that most of Laurens County, the area outside its municipal boundaries, is its sole and exclusive territory?

LCPW relies on a phrase in the statute: “For the purposes of this section, designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof.”

If the Court interprets §5-7-60 as requested by LCPW, LCPW, a commission of public works of the City of Laurens (not the County of Laurens), would indeed have the

authority to declare an area wholly outside its city limits as its exclusive service area. To bolster its claim, LCPW passed a resolution on the same day this litigation was filed attempting to claim almost all of Laurens County as its service area.

LCPW is not, however, the “governing body” of the disputed area. LCPW has no governing authority outside the corporate limits of the City of Laurens.

Municipalities have unique authority within their city limits. A commission of public works and a city council are both considered agencies of a municipal government. “[T]he board of commissioners is not in any sense a separate corporation *but a mere municipal agency*, through whose management and control the General Assembly has required that the municipality shall operate and manage its waterworks....” *City of Spartanburg v. Blalock*, 223 S.C. 252, 259, 75 S.E.2d 361, 364 (1953).

South Carolina Code Ann. §5-7-60 was enacted as a part of the Home Rule Act of 1975. *City of Newberry v. Pub. Serv. Comm’n of S. Carolina*, 287 S.C. 404, 406, 339 S.E.2d 124, 126 (1986). The purpose of §5-7-60 was to delineate the powers of a municipality outside its corporate limits. The statute says that a city can only provide its services outside of its territorial boundaries “by contract.” First and foremost, therefore, §5-7-60 is a limitation of authority on a municipality when it is acting outside of its territorial limits. The limitation specified is that municipal services provided outside of its territorial limits will only be by contract with the person or entity that is receiving the service.

In *City of Darlington v. Kilgo*, 302 S.C. 40, 42, 393 S.E.2d 376, 377 (1990), the cities of Darlington and Hartsville sued the county administrator to enjoin Darlington County’s plan to create a county wide fire district that would include all of the

unincorporated areas of the county. The county contended that pursuant to the County Fire Protection Services Act it had the authority to create the fire service district. The cities, on the other hand, contended that they already had contracts to provide fire service within a 5 mile radius of their borders. The cities contended that the county had to obtain their agreement before the county could provide fire service inside the 5 mile area.

The cities' position was based on §5-7-60. The Supreme Court held that "[i]t is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire protection district." *City of Darlington, id.*, at 302 S.C. 40, 44, 393 S.E.2d 376, 379 (1990). The Court went on to state that this "provision does not embody veto power, *but allows both entities to furnish service* with a determination of how the costs thereof shall be shared." [Emphasis added]

The disputed territory in this case is outside of both municipal territorial limits. The significance of §5-7-60 is that if Laurens County decided to go into the natural gas business, it would have to obtain the agreement of Fountain Inn and LCPW.¹ Section 5-7-60 does not, however, provide LCPW (or Fountain Inn) with the ability to stop the other from providing natural gas service in the county, i.e., outside their respective territorial limits because *neither has "governing authority" outside their respective corporate limits.*

In *City of Darlington*, the both the county and the city wanted to provide the same service — fire protection — in the unincorporated portions of the county. The Court recognized that since the area being discussed was outside city limits, the county had the authority to provide fire protection services. The cities in *City of Darlington* did not claim

¹ And that of Clinton-Newberry Natural Gas Authority.

that they had the right to provide the service, but that they already had contracts in place and they were providing the service in the "limited" area immediately outside their city limits.

In *Carolina Power & Light Co. v. Darlington County*, 315 S.C. 5, 8, 431 S.E.2d 580, 582 (1993) the Supreme Court explained its holding in *City of Darlington* and held that:

[The] legislative intent [of §§ 4-19-10 and 5-7-60] was to allow municipalities to continue to offer fire protection service in areas previously served under contract, and that such areas could not be included in any county district plan without prior agreement with the municipality.

The statutes as interpreted in *Kilgo*, supra, clearly require a valid contract with the city to avoid inclusion in the county fire district. As we stated in *Kilgo*, the legislative intent of the statutes is to allow counties to establish taxing districts for fire protection services without invading the province of another political subdivision or fire district. By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established. The use of some public authorization or ordinance by the appropriate municipal government is critical to put a county on notice, and to insure that there is no inclusion of an area already receiving fire service.

[Emphasis added]

Therefore, if §5-7-60 has any application to this case, the only "territory" that LCPW has is with respect to the customers that it has "under contract."

It is also important that the natural gas lines that LCPW has are "feeder" or supply lines. LCPW, Clinton-Newberry Natural Gas Authority and Fountain Inn Natural Gas all provide natural gas to customers in Laurens County. All three obtain their supply of natural gas from Transco. The Transco transmission lines are north of the city of Fountain Inn. Therefore, LCPW and Clinton-Newberry have supply lines that go through the city of Fountain Inn. LCPW had to construct natural gas lines to obtain a supply of

natural gas for the city of Laurens. In early 1985, LCPW decided it needed to construct a second supply line. Smoak testified that the line was "a new feeder line, a 10-inch natural gas line that would run from our tap with Transco, which is up north of Fountain Inn, and run all the way to the City of Laurens." The purpose of the new line was "to give [LCPW] a second feeder from Transco...." The investment made by LCPW had little to do with providing natural gas to customers near Fountain Inn but far more with balancing its system and securing a reliable supply of natural gas for the city of Laurens.

Clinton-Newberry Natural Gas Authority contends that its service territory includes the northern portion of Laurens County as well as the southern part of Spartanburg County. The City of Fountain Inn's service area spans both Greenville and Laurens counties.

Clinton-Newberry Natural Gas presumably has made a significant investment in and budgeted for the provision of natural gas services in the disputed area of Laurens County. Indeed, Coleman Smoak admitted that Clinton-Newberry provides service to customers in Laurens County some of which may violate a claimed territorial boundary. Clinton-Newberry submitted a bid on the ZF Transmission site, but LCPW did not sue them:

4. A listing of exhibits, indicating those to which there is a disagreement and a listing of witnesses to be called and, if available, their address and phone number.

a. Exhibits:

- (i) Letter from Coleman Smoak to Carey Elliott dated November 11, 1992.
- (ii) Letter from Carey Elliott to Coleman Smoak dated November 17, 1992.
- (iii) Letter from Coleman Smoak to Carey Elliott dated November 25, 1992.

- (iv) Letter from Dale Satterfield to Kenneth P. Walsh, ZF Transmissions dated March 30, 2011.
- (v) Map entitled "Fountain Inn Natural Gas – Greenville County Service."
- (vi) Map entitled "Fountain Inn Natural Gas – Laurens County Service."
- (vii) Map (Image U.S. Geological Survey – Google) depicting areas served and alleged boundary line.
- (viii) Map (Image U.S. Geological Survey – Google) depicting distance from Fountain Inn and distance from City of Laurens
- (ix) Letter from Carey Elliott to Coleman Smoak dated July 22, 1994.
- (x) Letter from Coleman Smoak to Carey Elliott dated August 15, 1994.
- (xi) Minutes of LCPW regular meeting September 13, 2004.
- (xii) Job Description of General Manager (LCPW) dated May 1993.
- (xiii) LCPW Resolution #11-03.
- (xiv) Job Description – City Administrator & Gas System Manager (Bates # City of Fountain Inn 000016)
- (xv) LCPW service area map from LCPW website.
- (xvi) Clinton Newberry Natural Gas Authority service area from CNNGA website.
- (xvii) Combined Utility System Refunding Revenue Bonds Series 2003A.
- (xviii) Email from Stan Bryson to Dale Satterfield (email string) dated March 17, 2011 (Bates # LCPW 0015).
- (xix) Email to Mike Pitman from Ken Walsh dated April 6, 2011 (Bates # City of Fountain Inn 000020).
- (xx) Letter from Dale Satterfield to Kenneth Walsh, ZF Transmissions dated March 20, 2011 ((Bates # City of Fountain Inn 000021).
- (xxi) Meeting Minutes – City of Fountain Inn City Council.
- (xxii) Meeting Minutes – LCPW Commissioners.
- (xxiii) Contract between ZF Transmissions and LCPW.
- (xxiv) Depositions or portions of depositions.
- (xxv) Exhibits attached to depositions.

b. Witnesses:

Gary Long,
Mayor

City of Fountain Inn
200 North Main Street
Fountain Inn, SC 29644

Ben Davis
Former Mayor

City of Fountain Inn
200 North Main Street
Fountain Inn, SC 29644

Edward C. Case,
City Administrator

City of Fountain Inn
200 North Main Street
Fountain Inn, SC 29644

T. Michael Pitman,
Gas Manager

Fountain Inn Natural Gas
100 S. Weston Street
Fountain Inn, SC 29644

5. Any unusual problems relating to evidence to be introduced.

None.

6. Any unusual question or matter which should be brought to the attention of the court.

None.

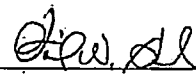
7. Settlement negotiations.

There have been no formal settlement negotiations.

Respectfully submitted,

HOLMES LAW FIRM

March 17, 2014
Greenville, South Carolina

By: 
David W. Holmes
Attorney for Defendant
SC Bar #2577

HOLMES LAW FIRM
712 N. Main Street
Greenville, SC 29609
Tel: 864-271-2381
Fax: 864-271-7994

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

CIVIL ACTION NO: 2011-CP-30-309

Commissioners of Public Works of the)
City of Laurens, South Carolina, also)
Known as the Laurens Commission of)
Public Works,)

PLAINTIFF'S SUPPLEMENTAL BRIEF

Plaintiff,)

vs.)

City of Fountain Inn, South Carolina)

Defendant.)

This matter was tried before the Court on March 20, 2014. The issue is whether the City of Laurens acting through the Laurens Commission of Public Works ("LCPW")¹ has established a "designated service area" pursuant to S.C. Code Ann. § 5-7-60 for furnishing natural gas such that the City of Fountain Inn may only serve in that area with the permission of the City of Laurens. The LCPW submits that it has established a designated service area within the meaning of the statute. Therefore, it requests that this Court grant a declaratory judgment in its favor and enjoin the City of Laurens from providing service in that designated service area.

I. The Statute

S.C. Code § 5-7-60 provides:

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefore and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for

¹ Under *City of Spartanburg v. Blalock*, 223 S.C. 252, 75 S.E.2d 361 (1953), the Laurens Commission of Public Works is the entity that acts for the City of Laurens in providing utility services.

all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. 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.

Id.

A. Background of S.C. Code Ann. § 5-7-60

"The Home Rule Act of 1975 completely rewrote the powers of municipalities in this State. S.C. Code Ann. § 5-7-60 (1976) contains provisions *both granting and delimiting* the exercise of corporate functions of municipalities outside their corporate limits." *City of Newberry v. Public Service Com'n of South Carolina*, 287 S.C. 404, 339 S.E.2d 124 (1986) (emphasis added).

Originally, S.C. Code Ann. § 5-7-60 was enacted by the General Assembly as a part of Act No. 283 (1975 Acts) ("Act No. 283") which is commonly referred to as the Home Rule Act. The purpose of the Home Rule Act was to comply with the mandate of new Article VIII (Local Government) of the Constitution of the State which was ratified in 1973. Article VIII, Section 9 directed the legislature to establish the "...structure and organization, powers, duties, functions, and responsibilities of the municipalities...." Additionally, Act No. 283 set forth the structure, organization, powers, duties, functions and responsibilities of county government. *See e.g.*, James Lowell Underwood, *The Constitution of South Carolina, Volume II: The Journey Toward Local Self-Government*, Chapter 9 (1989). S.C. Code Ann. § 5-7-10 provides that "[t]he powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of

particular powers shall not be construed as limiting in any manner the general powers of such municipalities."

Prior to the Home Rule Act, and specifically with respect to Section 5-7-60, there were no generally applicable laws governing the furnishing of services by municipalities outside of their corporate limits. There are, however, specific authorizations to provide certain services: extension of both water and sewer systems beyond the city limits, S.C. Code Ann. § 5-31-1520; authorization for municipalities having populations between 3,000 - 4,000 to extend water or sewer disposal facilities, S.C. Code Ann. § 5-31-1710; authorization for cities and towns to furnish water and electric current beyond corporate limits by contract but contiguous thereto, S.C. Code Ann. § 5-31-1910.

Article VIII greatly broadened the powers that counties were able exercise prior to 1973, including "...the power to tax different areas at different rates of taxation related to the nature and level of governmental services provide." Article VIII, § 7. Prior to 1973, if there was a need to provide governmental services in a populated but unincorporated area of a county, the General Assembly would create a local unit of government with a specific power or powers which would be exercised within a designated geographic area. These units came to be known as special purpose districts. However, after the South Carolina Supreme Court decision in *Knight v Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974), the General Assembly could no longer create a special purpose district within an existing county. *Knight* concerned the creation of a special purpose district to provide recreational facilities in a portion of Dorchester County, which the Court held to be unconstitutional under Article VIII, Section 7's prohibition of the enactment of laws for a specific county.

It is important to note that counties are prohibited from constructing or purchasing and operating gas and electric systems and plants. S.C. Const., Art. VIII, § 16. Thus, after the ratification of Article VIII and the enactment of the Home Rule Act, municipalities were granted a variety of powers under S.C. Code Ann. § 5-7-30, and counties possessed the newly granted ability to tax different areas at different rates of taxation. See: Underwood, *supra*, Chapter 7.

As envisioned by the provisions the Home Rule Act, specifically the grant for authority to furnish services extra-territorially, the LCPW extended its natural gas system to an unincorporated area of Laurens County, expended and applied funds for lines and transmission facilities and has continually maintained these facilities therein since well before 1992. Section 5-7-60 rewards the foresight of municipalities that perform their functions and furnish any of their services outside their corporate limits by deeming these areas as "designated service areas." Once such a designated service area is established, the municipality performing functions and furnishing services therein is granted the exclusive right to ". . . contract with any individual, corporation, state or political subdivision or with the United States Government or any agency thereof . . ." S.C. Code Ann. § 5-7-60. To allow another municipality to perform functions and furnish services identical to those already performed and furnished by another municipality within a designated service area would defeat the purpose of or be contrary to the plain language of Section 5-7-60. Also, as testified by Scott Heath, P.E., of Heath & Associates, at trial, such a situation would result in duplication of costs and create safety concerns by having natural gas lines in close proximity to each other, for example, making it difficult to resolve any possible leaks.

B. Application of Section 5-7-60 In This Case

This dispute arises out of the differing opinions of the parties as to the meaning of Section 5-7-60. The LCPW contends that the statute means what it says – that a municipality's designated

service area is the area it serves - while Fountain Inn contends that a municipality only has the right to exclude others from providing services within the municipality's corporate limits. In fact, in its motion for summary judgment and in its pre-trial brief, Fountain Inn stated: "The disputed territory is outside of both municipal territorial limits. The significance of Section 5-7-60 is that if Laurens County decided to go into the natural gas business, it would have to obtain the agreement of Fountain Inn and LCPW [footnote omitted]. Section 5-7-60 does not, however, provide LCPW (or Fountain Inn) with the ability to stop the other from providing natural gas service in the county, i.e., outside their respective territorial limits."

However, if the City of Fountain Inn were correct, Section 5-7-60, would say:

For the purposes of this section designated service area shall mean the corporate limits of the municipality providing the service.

Or the statute could simply say:

Any municipality may perform any of its functions, furnish any of its services... in areas outside the corporate limits of such municipality by contract... except within the corporate limits of another municipality.

Of course, another possibility would be that the designated service area for a municipality would be an area designated by the county in which the municipality is located, or some other entity. If that were the case, the statute would say:

For the purposes of this section designated service area shall mean the area designated by the county in which the municipality is located [or by the XYZ Commission].

But that is not what the statute says. The statute says, in pertinent part:

For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. (Emphasis added).

As stated in the recent case of *Hudson ex rel. Hudson v. Lancaster Convalescent Center*, ___ S.C. ___, 754 S.E.2d 486 (S.C. 2014):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007).

Id. at ___, 754 S.E.2d at 491.

The appellate courts of South Carolina have applied Section 5-7-60 as it is written. In *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984), the South Carolina Supreme Court held that the Sewer District qualified as a "designated service area" under S.C. Code Ann. § 5-7-60 based upon the Sewer District's affidavit stating that the Sewer District had constructed sanitary sewerage collection lines, transmission lines and treatment facilities to handle the waste water generated by the users of the sewerage system located within the Sewer District. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261. Thus the Sewer District could limit the City of Spartanburg from providing a competing service in the same area. *Id.* ("The Sewer District thus would fit the definition of a designated service area, and the City would therefore be prohibited from extending its collection lines to areas outside its corporate limits absent permission from the Sewer District.") In that case, the fact that the Sewer District had

the facilities in place to provide service to that area qualified it as the Sewer District's "designated service area."

In *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990), the Cities of Hartsville and Darlington were providing fire protection services by contract in a five-mile radius outside their corporate limits under § 5-7-60. *Id.* at 42-43, 393 S.E.2d at 377 - 78. Darlington County passed an ordinance creating a fire district under S.C. Code Ann. § 4-19-10 to include all unincorporated areas of Darlington County. *Id.* at 42, 393 S.E.2d at 377. The Cities of Hartsville and Darlington sued to prevent the fire district from providing fire protection service where the cities were already providing it which included an area outside the corporate limits of those cities. *Id.* In that case the cities relied on § 4-19-10(b) which provides, in pertinent part, that a fire district may not include within its service area:

those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of the fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.

Kilgo, 302 S.C. at 43, 393 S.E.2d at 378 (emphasis added).

The Supreme Court held that § 4-19-10(b) and § 5-7-60 are not in conflict and that § 4-19-10(b) "protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in absence of an agreement, newly created county fire districts must exclude areas served by cities under contract." *Id.* That service area was defined to be the 5-mile radius around the City of Darlington and the City of Hartsville in which the Cities provided fire protection services. *Id.*, 393 S.E.2d at 378.

There is a distinction between *Kilgo* and the case at bar -- namely that there was an additional statute providing that a service area is an area in which a service is being provided.

However, the language in § 4-19-10 is materially the same as the pertinent language in § 5-7-60. What is important about *Kilgo* to this case is that under the language of § 5-7-60 and the parallel language in § 4-19-10(b) regarding a service area, the cities had the right to control the provision of a service outside the cities' corporate limits where the cities were already providing that service by contract, and the only requirement for designating that area was that the municipality was serving it. As pointed out in the dissent in *Kilgo*, that area included the entire area in which the service was made available by contract and not just to the customers with whom the cities had existing contracts. *Id.* at 45-49, 393 S.E.2d at 379-382. Thus, LCPW would not even need to show that it has customers extending throughout the area in dispute to establish its designated service area. However, as evidenced by the testimony of Coleman Smoak (General Manager of the LCPW, 1985-2006), Dale Satterfield (General Manager of the LCPW, 2006-2014) and John Young (Current General Manager of the LCPW), the LCPW does in fact have customers extending throughout the disputed area, and can, therefore, clearly establish its designated service area.

Similarly in *Mathis v. Hair*, 358 S.C. 48, 594 S.E.2d 851 (2002), the Court of Appeals had to define the meaning of a "service area" for purposes of S.C. Code Ann. § 23-9-420. *Id.* at 852. The Court noted that the language in § 23-9-420 is similar to the language used in § 5-7-60 and that "service area" is defined by the statute to mean an area in which the service is being provided. *Id.* at 53, 594 S.E.2d at 854.

Plaintiff submits that the words of the statute and its interpretation by the South Carolina Supreme Court and the Court of Appeals mean that because the LCPW has furnished natural gas in a specific area outside its city limits, that area is its designated service area, and the City of Fountain Inn may not serve customers in that area without first obtaining permission from LCPW. It has long been the policy of South Carolina that "there cannot be at the same time, within the same territory,

two distinct municipal corporations, exercising the same powers, jurisdiction and privileges.” *Wagner v. Smith*, 221 S.C. 438, 71 S.E.2d 1. (1952) (internal citations omitted). Section 5-7-60 reflects that policy.

II. Application Of The Statute And The Case Law To The Facts Of This Case

LCPW submits that the facts presented at trial demonstrate that LCPW has established a designated service area in accordance with Section 5-7-60 and the case law interpreting it.

There is a specific service area outside the city of Laurens in which the LCPW has provided natural gas service for decades. That service area is shown on the map submitted as Exhibit 1A and as Exhibit 9. Just as in *Spartanburg Sanitary Sewer District*, it was established in this case by the testimony of Coleman Smoak, Dale Satterfield and Scott Heath that the LCPW has had the facilities in place to provide natural gas service throughout the designated service area since before 1992, and, in fact has excess capacity. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261.

Similar to the facts in *City of Darlington v. Kilgo*, the testimony of Coleman Smoak, Carey Elliott (former Gas Manager for Fountain Inn), Dale Satterfield and Scott Heath, showed that this area was served exclusively by the LCPW since before 1992. *See Kilgo*, 302 S.C. at 43, 393 S.E.2d at 378 (noting that the service area was established by the actual provision of services). Fountain Inn did not seek to serve that area until shortly before this action was filed, and any crossover by Fountain Inn into the territory was incidental and minimal. It was not until an industrial customer known as ZF moved to the Owings Industrial Park that Fountain Inn attempted to compete against the LCPW for customers.

Further, Mr. Smoak, Mr. Satterfield and Mr. Young confirmed that the LCPW has had and still has contracts throughout the service area since at least 1992. Therefore, under the reasoning in

Kilgo, the entire area in which the LCPW has contracts is its designated service area. *Id.* (“[T]his Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a “service area.”)

It is true that the document establishing the territory was not formally ratified by the LCPW or the City of Fountain Inn. However, the importance of the 1992 letter “agreement” is that it clearly designated a territory that each municipality would serve. Had the LCPW not actually provided service in the territory, then under Section 5-7-60, it would not be able to claim that area as its designated service area. Nothing in the statute or in any case law indicates that an agreement is necessary to establish a designated service area.

The evidence and arguments that Fountain Inn raised do not change the analysis. For example, Fountain Inn introduced the fact that Fountain Inn is considerably closer to Owings Industrial Park than the City of Laurens. Nothing in Section 5-7-60 makes the location of the city a relevant inquiry. In *Spartanburg Sanitary Sewer District*, the Supreme Court rejected an argument by the City of Spartanburg that it could serve the Hillbrook drainage basin more economically than the Sewer District. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72-73, 321 S.E.2d at 261. While the Supreme Court’s conclusion as to that point is not expressly based upon its earlier finding that the Sewer District constituted a designated service area under Section 5-7-60, the Court notes that nothing in the Act creating the Sewer District indicated an intent to allow the City to serve areas in the District because the City could more conveniently do so. *Id.* The same is true here. Section 5-7-60 establishes that the right to serve an area is created by furnishing services in the area, budgeting funds to serve in the area, or applying for funds to serve an area as certified by governing body thereof – not the relative location of the municipalities. As alluded to above, if the legislature had intended to include that provision in the statute, it could have done so.

Fountain Inn also introduced evidence that it competes with Piedmont Natural Gas for gas service. Piedmont Natural Gas, however, is not a municipality. It is investor owned and is regulated by the Public Service Commission. Therefore, under *Glendale Water Corporation of Florence, Inc. v. City of Florence*, 274 S.C. 472, 265 S.E.2d 41 (1980), Fountain Inn can extend its lines into areas served by a private utility. Because the LCPW is a municipal provider, Fountain Inn cannot extend into the LCPW's designated service area.

Fountain Inn pointed out that Resolution 11-03 (Exhibit 8), certifying that the LCPW currently serves the area the subject of this lawsuit, has budgeted to serve the area, and has applied funds of the Combined Utility System to serve the area was passed just as this lawsuit was being filed. That fact is of no moment. The passage of that resolution was to verify something that had been done with the knowledge and acquiescence of Fountain Inn for decades – acting as the only provider of natural gas service in the area. Under *Spartanburg Sanitary Sewer District and Kilgo*, providing the particular service in question is enough to establish a designated service area.

Fountain Inn also introduced evidence that though Fountain Inn had to run a feeder line into the designated service area to provide service in Owings Industrial Park, LCPW had to run a line as well to ZF. However, Dale Satterfield noted that there is a difference between running a feeder line into an area so that you can provide service, as Fountain Inn had to do, and running a tap from your existing feeder from which you are already providing service. The difference is that Fountain Inn had to create the infrastructure to service ZF, while LCPW simply had to connect ZF to its existing infrastructure to provide its services.

Fountain Inn introduced evidence that LCPW has served customers on the Fountain Inn side of the boundary line. A review of the map that Fountain Inn presented will show that LCPW is serving very few customers on the Fountain Inn side of the line, and they are barely over the line.

No evidence was presented that Fountain Inn had complained about that service, or as to whether that service had been consented to by Fountain Inn. Further, that fact has nothing to do with LCPW's establishment of a service area under Section 5-7-60. If Fountain Inn wants LCPW to stop serving certain customers on Fountain Inn's side of the line, it may ask LCPW to do so.

Finally, the Court raised some issues about the statute. One issue was the limitations the statute places upon competition. First, not all competition is limited. As mentioned above, investor owned utilities may obtain a license from the Public Service Commission to compete in a municipality's designated service area, but would have to obtain PSC approval. Second, there are policy reasons to limit particular services to one municipal provider, such as safety issues and incentives for municipalities to provide the service. However, the most important point is that the legislature drafted a clear statute to reflect legislative policy which does not permit a municipality to provide a service in an area already being served by another municipality.

Also, the Court asked about the limits of Section 5-7-60. In other words, can a municipality provide services as far out as it wants to? The answer is that the statute does not place a geographical limitation on a municipality's provision of services outside its corporate limits. However, that is not at issue in this case, first, because the LCPW is not seeking to expand its service area but merely to enforce it. Second, the LCPW's ability to expand is limited or prohibited by other previously existing designated service areas – such as Fountain Inn's designated service area. Also, the statute has been in existence for almost 40 years, and to the knowledge of Plaintiff, this issue has not posed a serious problem. Presumably, as in this case, the existence of various designated service areas as well as economic considerations have prevented municipalities from expanding beyond reasonable limits. Furthermore, if the legislature had deemed it necessary to place mileage limits around designated service areas, it could have done so.

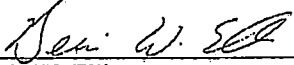
III. Conclusion

This is a statutory case in which the LCPW has complied with the requirements to establish a territory as its designated service area for a particular service, natural gas, under S.C. Code Ann. § 5-7-60. Clearly, one can question why the legislature established the rule it did in that statute. LCPW argues that it was because it incentivizes municipalities to serve underserved areas outside their city limits, and it avoids overlapping municipal services such as fire service and natural gas. Whatever the reasons were, the statute has never been found to be unclear, and LCPW submits that under the statute, it has established a designated service area such that Fountain Inn may not provide natural gas service in that area without the consent of the LCPW.

WHEREFORE, the LCPW prays for a declaratory judgment that the area shown in Exhibits 1A and Exhibit 9 is LCPW's designated service area for natural gas service under Section 5-7-60, that Fountain Inn be enjoined from providing such service in that designated service area, that Fountain Inn be required to relinquish any contracts for providing natural gas service in the designated service area, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted

MCNAIR LAW FIRM, P.A.


Bernie W. Ellis
SC Bar No. 64841
Post Office Box 447
Greenville, South Carolina 29602
Tel. (864) 271-4940
Fax (864) 271-4015
Attorney for Plaintiff

Greenville, South Carolina
April 3, 2014

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

MEMORANDUM OF LAW

CITY OF FOUNTAIN INN

The Defendant, the City of Fountain Inn ("City") would respectfully submit the following Memorandum of Law in support of its position that judgment should be granted in its favor.

I. INTRODUCTION

Fountain Inn owns and operates a natural gas system that provides natural gas to customers both inside and outside the city limits of the City of Fountain Inn. It has been in operation for many years. Laurens Commission of Public Works ("LCPW") also operates a natural gas system. It also provides water, sewer and electricity, but does so primarily for the City of Laurens.

The Laurens County Development Corporation owns a new industrial site, Owings Industrial Park, that is located about 3 miles outside of the city limits of Fountain Inn. In 2011, ZF Transmissions bought property in the park and built a plant that will use a significant quantity of natural gas. Fountain Inn, LCPW and Clinton Newberry Natural Gas all submitted bids to ZF. ZF awarded the contract to LCPW.

Because Fountain Inn submitted a bid to ZF, LCPW filed this lawsuit. Initially, LCPW claimed that it had a written contract with Fountain Inn that placed the industrial park within its exclusive territory. LCPW has abandoned that claim (and the other related claims). LCPW, alleges that S.C. Code Ann. §5-7-60 places the industrial park its "designated service area" because LCPW claims that it spent money to build a natural gas system and that it has "contracts" to serve customers in the area.

II. SOUTH CAROLINA CODE ANNOTATED § 5-7-60

This case revolves around the interpretation of a portion of the statute. S. C. Code §5-7-60 states: "For the purposes of this section, designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." (Tab 1)

A. LCPW HAS NOT BUDGETED FUNDS TO PROVIDE SERVICE IN THE AREA

This is a fact issue and it cannot really be in dispute. ALL of the natural gas providers in the upstate of South Carolina get natural gas from TRANSCO. TRANSCO has a large natural gas pipeline that runs from Texas to New England. LCPW, Fountain Inn, and Clinton Newberry Natural Gas Authority¹ "tap" into the TRANSCO line inside the city of Fountain Inn. Piedmont Natural Gas also gets its supply of gas from TRANSCO but its tap is outside the city of Fountain Inn.

LCPW had to build a supply line from Fountain Inn to Laurens to be able to supply natural gas to the city of Laurens. That line was built in the 1950's. In the mid 1980's, LCPW decided to build a second supply line from Fountain Inn to the city of Laurens. Of necessity,

¹ Clinton Newberry Natural Gas Authority was created by Act No. 789 of the 1952 Acts of the General Assembly, 47 St. at L. 1958. See, *Welling v. Clinton Newberry Natural Gas Authority*, 71 S.E.2d 7, 221 S.C. 417 (S.C. 1952)

both supply lines run through the "disputed area." The reason the second supply line was built was to provide an alternative supply line in case the original one was cut or damaged. LCPW built a line along Stoddard Road connecting the two supply lines. That way, if either line was cut, the city of Laurens would still have a supply of natural gas.

The *only* way LCPW can supply natural gas to the city of Laurens² is the tap into the TRANSCO pipeline that happens to be located in Fountain Inn. Can LCPW serve customers from those lines? Yes. But so can Clinton Newberry Natural Gas. The reason LCPW spent money building their supply lines was to secure a reliable source of natural gas for the city of Laurens - not so that it could supply natural gas to the northern portions of Laurens County. In the 1980's and certainly in the 1950's, the disputed area in northern Laurens County was primarily rural - homes and farms. It remains so even today with the notable exception of Owings Industrial Park.

LCPW does not claim that these same lines give it the right to serve inside the city of Fountain Inn or up to its borders even though both lines originate and pass through Fountain Inn. In fact, LCPW denies that Clinton Newberry has the right to serve natural gas inside this area even though Clinton Newberry has supply lines in the area and it can supply natural gas to customers from those lines.

Fountain Inn has also spent money to build natural gas lines outside its city limit. The industrial park is 3 miles outside its city limits. The same area is 15 miles from Laurens.

B. LCPW IS NOT THE "GOVERNING BODY" IN THE DISPUTED AREA

Does the statute's "designated service area" apply in this case? Fountain Inn believes that it does not. In every case where this portion of the statute is discussed, it is with regard to a

² LCPW is part of the city of Laurens. A commission of public works and a city council are both considered agencies of a municipal government. "[T]he board of commissioners is not in any sense, a separate corporation *but a mere municipal agency*, through whose management and control the General Assembly has required that the municipality shall operate and manage its waterworks...." *City of Spartanburg v. Blalock*, 223 S.C. 252, 259, 75 S.E.2d 361, 364 (1953).

city versus another government entity that has the authority to provide the service within the disputed area. What did the Legislature intend by the use of the phrase "governing body" in §5-7-60?

In *City of Darlington v. Kilgo*, 302 S.C. 40, 42, 393 S.E.2d 376, 377 (1990) (Tab 2), the cities of Darlington and Hartsville sued Darlington County to stop the creation of a county wide fire district that would include areas where the cities were providing fire service outside their city limits but within Darlington County. By statute, the county had the authority to create the fire district. The cities had contracts to provide fire service within a 5 mile radius of their borders. Unlike LCPW, however, the cities, correctly, did "not challenge [the county's] right to 'create' a fire district; they contend[ed] that such a district may not include areas served by the Cities."

The Supreme Court, even in light of §5-7-60, held that "[i]t is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire protection district." *City of Darlington, id.*, at 302 S.C. 40, 44, 393 S.E.2d 376, 379 (1990) [Emphasis added]. The Court went on to state that this "provision *does not embody veto power, but allows both entities to furnish service* with a determination of how the costs thereof shall be shared." [Emphasis added]

The "governing body" in *City of Darlington* was Darlington County because the fire district was in the county. LCPW contends that it has governing authority outside its city limits when it clearly does not. Fountain Inn contends that the "governing body thereof" referenced in the statute must be the governing body having jurisdiction to legislate the place where the

service is to be provided. Neither Fountain Inn nor LCPW are the "governing body" of an area outside their corporate limits.³

This can be seen when comparing §5-7-60 to a similar statute concerning the authority of counties: § 4-9-40 "Power of county to contract for services within municipalities."⁴ (Tab 3)

Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality ... by contract with any individual, corporation or municipal governing body.... Provided, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body. [Emphasis added]

The only governing body referred to in §4-9-40 is a municipality. Therefore the statute ends with the requirement that permission be granted by the "municipal governing body." It is also clear that the "municipal governing body" must be the governing body over the city to be served.

The reason §5-7-60 ends with the requirement that the "governing body thereof" make the certification is because there may be another government agency that has jurisdiction over the area. For example, the area may be governed by a special purpose district, a county or some other government authority. LCPW is not the "governing body" of the disputed territory because it has no authority to legislate outside the city of Laurens. That is consistent with the *City of Darlington* case. The cities claimed that there was a conflict between §4-19-10 and §5-7-60. The Supreme Court acknowledged that §5-7-60 discussed a designated service area. However, the Court said that the county had the authority to provide fire protection in the disputed area

³ A witness for LCPW admitted that the Laurens City Council must approve its bond issuances. The full faith and credit of the City of Laurens, not Laurens County, is pledged to repay those bonds. Neither LCPW nor the city of Laurens may assess taxes, adopt ordinances, etc., concerning property lying outside the city limits.

⁴ Unlike municipalities, counties have no authority to provide services outside the corporate limits of the county. If a county wants to provide a service inside a municipality, it may do so only with permission of the municipality if the municipality (the only "governing body") certifies that the "service is being provided" or the municipality has "budgeted or funds have been applied" for the service.

(outside the city limits but in the county); and the cities and the county had to work out an agreement on how the cost of the service would be provided within the disputed area.

Section 5-7-60 would only apply to this case if Fountain Inn wanted to supply natural gas within the city limits of Laurens or vice versa. If Fountain Inn wanted to supply natural gas to a customer inside the city of Laurens, LCPW could prevent it because LCPW can certify, as the "governing body" of the city of Laurens, that the service is being provided. This occurs most often where water or sewer is concerned. The Greenville Water System (a utility of the city of Greenville) supplies water inside the city limits of most (if not all) Greenville County cities. It could not do that, however, if a city certified that it provided the water on the basis of §5-7-60. Similarly, the Greenville Water System could not prohibit another city from supplying water to a customer outside the city limits of Greenville.

C. LCPW DOES NOT SERVE THE ENTIRE DISPUTED AREA

LCPW contends that it serves the entire disputed area by having some customers in the area. It does not contend that it provides natural gas to every parcel of property in the disputed area or even the bulk of them. In fact, it provided no evidence whatsoever of whom it serves in the area other than ZF. It contends merely that it has the ability to provide the service.⁵ That does not, however, satisfy *City of Darlington* requirement that there be a contract in place to supply the service.

In *Carolina Power & Light Co. v. Darlington County*, 315 S.C. 5, 8, 431 S.E.2d 580, 582 (1993) (Tab 4) the Supreme Court further explained its holding in *City of Darlington*. Carolina Power and Light claimed that Darlington County could not assess tax for the fire district because it had a contract with Hartsville; hence, it was within Hartsville's fire service area. The Court stated that "[t]he real question before us today is the existence of the contract [between CP&L and

⁵ To supply natural gas, a customer must be physically connected to a distribution line. LCPW admitted that it had to build a distribution line in order to serve ZF Transmissions.

Hartsville].” Because the court decided that the written contract between CP&L and the city of Hartsville was invalid, the Supreme Court held:

The statutes, as interpreted in *Kilgo*, supra, [4-19-10 and 5-7-60] clearly require a valid contract with the city to avoid inclusion in the county fire district. As we stated in *Kilgo*, the legislative intent of the statutes is to allow counties to establish taxing districts for fire protection services without invading the province of another political subdivision or fire district. By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established. [Emphasis added]

Because CP&L did not have a valid contract with Hartsville, CP&L was included in the county fire district. The county was the “governing body.” It had the authority to provide fire service.

Therefore, if §5-7-60 has any application to this case (which Fountain Inn denies), the only “area” that LCPW has is with respect to the customers that it has “under contract.” The disputed area lies 15 miles (as the crow flies) from the city of Laurens.

Finally, Clinton-Newberry Natural Gas Authority presumably has made a significant investment in and budgeted for the provision of natural gas services in the disputed area of Laurens County based upon the same reasoning advanced by LCPW: that Clinton Newberry spent millions to construct supply lines from the TRANSCO pipeline. Indeed, Coleman Smoak admitted that Clinton-Newberry provides service to customers in Laurens County some of which may violate a claimed territorial boundary. In addition, Clinton-Newberry also placed a bid on the ZF Transmission site, but LCPW did not sue them. If indeed the disputed area is LCPW’s “designated service area” pursuant to §5-7-60, why isn’t Clinton Newberry Natural Gas Authority a party to this litigation?

D. THE APPLICATION OF SECTION 5-7-60 IS UNNECESSARY

LCPW is advocating for a monopoly in northern Laurens County. The Legislature has given cities monopolies within their city limits; however, it did not give LCPW a monopoly in the county. LCPW cannot pass a resolution claiming the vast bulk of the county as its "designated service area" as it attempted to do in this case. In §5-7-60, the Legislature provided that LCPW *may* provide natural gas outside its corporate limits. Fountain Inn may do the same. As a result, the residents and businesses in this area benefit because there is a choice of more than one source for natural gas.

In *City of Darlington* and *Carolina Power & Light* the Supreme Court made it abundantly clear that where two governmental entities had the authority to provide a service, it was incumbent on them to do so jointly. The way the Court resolved the issue was based upon the statute - to require a valid contract.

Here, the simple resolution of the matter is that either LCPW or Fountain Inn may provide natural gas service to a customer outside their respective city limits by contract. The resolution, therefore, lies with the customer. Any customer may choose which utility it wants as its natural gas provider. The "service area," that is, each customer with which there is a contract, is protected so long as the contract is in existence. LCPW and Fountain Inn must each determine if the cost to provide the service is beneficial to its constituents.

III. CONCLUSION

For the reasons stated herein the City of Fountain Inn respectfully requests that the Court dismiss the Complaint.

Respectfully submitted,

HOLMES LAW FIRM

April 3, 2014
Greenville, South Carolina

By: 

David W. Holmes
Attorney for Defendant
SC Bar #2577

HOLMES LAW FIRM
712 N. Main Street
Greenville, SC 29609
Tel: 864-271-2381
Fax: 864-271-7994

TAB 1

SECTION 5-7-60. Municipality authorized to perform any of its functions or to furnish any of its services; charges and financing.

Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any individual, corporation, state or political subdivision or agency thereof or with the United States Government or any agency thereof, subject always to the general law and Constitution of this State regarding such matters, except within a designated service area for all such services of another municipality or political subdivision, including water and sewer authorities, and in the case of electric service, except within a service area assigned by the Public Service Commission pursuant to Article 5 of Chapter 27 of Title 58 or areas in which the South Carolina Public Service Authority may provide electric service pursuant to statute. For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof. 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.

TAB 2

302 S.C. 40
Supreme Court of South Carolina.

CITY OF DARLINGTON, City of Hartsville, J. Ronald Ward, Cecil Chandler, Pat Howle, Earl Johnson, James Hammons, Roseann W. Harry, Oby G. Lyles, Jr., L.M. Cannarella, T. James Bell, Jr., Pam P. Carrol, William A. Gaskins, Franklin Hines, Mary F. Jordan, T.B. Thomas, Tom Stewart, Marion "Bud" Gandy, Mrs. Guy Beatty, George Beckroge, Bishop Lenist Hunter, Beth Weaver, Mrs. Ann Osborne, Donald Sylvester, Bill Segars, Edward L. Melton, James T. Gainey, Marvin Odom, A.M. Odom, W.R. "Bill" Gunnells, William A. Bramlett, Jr., Jan Bramlett, Robert Hitch, Susan Hitch, Robert B. Moody, Barbara W. Moody, Don A. Parnell, Jack W. Price, Laurie G. Price, Respondents,

v.

Robert L. KILGO, Jr., Jerrell Sansbury, Rosa Lee Gerald, Robert L. Bryant, Bobbie S. Gardner, Lucious T. Bacote, Richard Griggs, Maxie O. Redic, Jr., and Billy D. O'Neal, Appellants.

No. 23213. | Heard June 8, 1989. | Decided May 7, 1990.

Cities brought action against county administrator and members of county counsel, seeking an injunction to prohibit county council's implementation of plan which created a fire district which included all unincorporated areas of the county without seeking an agreement with the cities. The Common Pleas Court, Darlington County, George M. Stuckey, Jr., Special Circuit Judge, enjoined the county administrator and members of county council from creating a fire district which included property within five miles of the cities' boundaries unless and until the parties executed an agreement. Members of council and administrator appealed. The Supreme Court, Finney, J., held that: (1) the County Fire Protection Services Act allows municipalities to continue to offer fire protection service in areas previously served under contract, and such areas cannot be included in any county fire district plan without prior agreement with the municipality, and (2) five-mile radius protected by cities under contract constituted a "service area" under the County Fire Protection Services Act, and thus the five-mile radius could not be included in any county fire district plan without prior agreement with the cities.

Affirmed.

Goolsby, Acting J., dissented and issued an opinion in which Harwell, J., concurred.

Attorneys and Law Firms

****377 *41** Margaret C. Pope, Frank W. Cureton and Virginia L. Vroegop, Belton T. Zeigler, Sinkler and Boyd, P.A., Columbia, and Karl H. Smith, Hartsville, for appellants.

Martin S. Driggers, Hartsville, and Paul A. Sansbury, Darlington, for respondents.

Roy D. Bates, Columbia, for amicus curiae Mun. Ass'n of S.C.

Opinion

FINNEY, Justice:

***42** This is an appeal of a summary judgment order granting respondents, City of Darlington, City of Hartsville (Cities) and other individuals who live in or near the Cities an injunction against appellants, the Darlington County Administrator and members of the Darlington County Council (County). We affirm.

Darlington County Council passed an ordinance creating a fire district which included all unincorporated areas of Darlington County. The County did not seek an agreement with the Cities prior to adopting this plan. The respondent Cities sued to enjoin implementation of the plan as a violation of S.C.Code § 4-19-10 (1976) because the County's proposed service area includes areas for which the Cities provided fire protection. The Cities moved for summary judgment. The trial court enjoined appellants from creating a fire district which included property within five miles of the Cities' boundaries unless and until the parties executed an agreement. This appeal followed.

In addition to furnishing full fire protection service within their corporate limits, the Cities also contract to provide limited service within a five-mile radius outside their municipal boundaries. Service to these outlying areas is confined to structures under contract or life-threatening fires. The record reflects that the Cities respond to fire calls for non-contract structures, at which time the owner generally agrees to pay the fee.

¹ First, appellants contend § 4-19-10 does not restrict its ability to create a county-wide fire district without an

agreement because the Cities' limited fire protection does not qualify the five-mile radius as a "service area" as contemplated by the statute.¹ The County Fire Protection Services Act, Section 4-19-10, provides:

Appellants assert that fire protection is available within the five-mile radius only upon payment of a fee, that such coverage is provided only for structures, and that less than one-third of the property owners are covered by contract.

Powers of governing body generally.

The governing body of each county has the following powers:

(a) To establish, operate, and maintain a system of fire protection.

**43 (b) To designate, subject to the provisions of § 4-19-20, the areas of the county **378 where fire protection service may be furnished by the county under the provisions of this chapter (referred to in this chapter as service areas); provided, however, that these service areas shall exclude those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.*

... (Emphasis Added.)

In its findings preceding reenactment of the County Fire Protection Services Act in 1984, the South Carolina legislature made clear its intent by stating that "[t]he General Assembly has determined to reenact this legislation under which counties may provide fire protection services within the unincorporated areas of such counties where no fire protection services are presently offered by any existing special purpose district or municipality ..." Act No. 408, 1984 S.C. Act 1818. (Emphasis added.) As noted in § 5-7-60, municipalities may only provide service outside their corporate limits by contract.

^[2] The trial court concluded that legislative intent was to allow municipalities to continue to offer fire protection service in areas previously served under contract, and that such areas could not be included in any county district plan without prior agreement with the municipality. We agree. It is our view that S.C.Code § 4-19-10(b) protects the rights of cities and customers who have contracted for fire protection under § 5-7-60 and that, in the absence of an agreement, newly created county fire districts must

exclude areas served by cities under contract. Since the legislature did not qualify the nature or extent of the "fire protection services ... offered," this Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a "service area."

^[3] Second, appellants assert that S.C.Code Ann. § 5-7-60 prohibits Cities from providing fire protection service to unincorporated areas after the County undertakes *44 service in such areas. Appellants recite language from *City of Myrtle Beach*² that "under no circumstances could the cities have a governmental right to interfere with the creation of such [county created fire] districts." *City of Myrtle Beach v. Richardson*, 280 S.C. 167, 169, 311 S.E.2d 922, 923 (1984). In the instant case, respondents do not challenge appellant's right to "create" a fire district; they contend that such a district may not include areas presently served by the Cities.³

² In *City of Myrtle Beach, supra*, this Court held in 1984 that the County Fire Protection Services Act of 1974 was repugnant to the 1975 Home Rule Act. We reasoned that because the 1975 Home Rule Act required freeholder initiative as a precondition of all special taxing districts, including fire protection districts, and the 1974 County Fire Protection Services Act did not require freeholder initiative, the former act was impliedly repealed by the latter. However, later in 1984, the General Assembly reenacted the 1974 County Fire Protection Services Act without change, thereby limiting the precedential value of the decision in *City of Myrtle Beach*.

³ The statutory mandate for an agreement between counties and municipalities provides for a resolution of such disputes with a view to providing uniform comprehensive fire protection to all residents in accordance with the spirit of the statute.

Under S.C.Code Ann. § 5-7-60 (1976), South Carolina cities may contract with any individual, corporation, state or political subdivision or agency to furnish fire protection outside the cities' corporate limits.⁴ Thus, the question is whether there is a conflict between the County Fire Protection Services Act, § 4-19-10(b), and the Cities' statutory rights under § 5-7-60. **379 This Court finds no conflict between § 4-19-10 and § 5-7-60.

⁴ Section 5-7-60 of the Code of Laws of South Carolina (1976) provides in pertinent part:
Any municipality may perform any of its functions, furnish any of its services, except services of police officers, and make charges therefor and may participate in the financing thereof in areas outside the corporate limits of such municipality by contract with any

individual, corporation, state or political subdivision or agency thereof or with the United States Government or agency thereof ... [emphasis added].

The 1984 County Fire Protection Services Act authorized the creation of such districts and established criteria which must be met for the institution of county fire districts. It is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire protection district. This provision does not embody veto power, but allows both entities to furnish service with a determination of how the costs thereof shall be *45 shared.

It is this Court's conclusion that the legislature balanced the county residents' interest in having full fire protection with the municipalities' interest in continuing service it has been providing by requiring an agreement between the two when the county proposes to institute county-wide protection. For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED.

GREGORY, C.J., and TOAL, J., concur.

HARWELL, J., and GOOLSBY, Acting Associate Justice, dissenting in separate opinion.

GOOLSBY, Acting Associate Justice, dissenting:

I respectfully dissent.

The respondents City of Darlington, City of Hartsville, and several individuals living either in or near these municipalities brought this action against the Darlington County Administrator and the members of the Darlington County Council to enjoin them from implementing an ordinance that created sometime prior to May 11, 1987, in all unincorporated areas of Darlington County, with the exception of two areas protected by rural fire districts, a fire protection district, called the Darlington County Fire Protection District. The new district embraces unincorporated areas in which Darlington and Hartsville, according to the Statement, "offered fire protection services" pursuant to contracts. The Circuit Court granted summary judgment to Darlington, Hartsville, and the other respondents and enjoined the County Administrator and the County Council from creating a fire protection

district in Darlington County within the "service area[s]" of Darlington and Hartsville, absent agreements between the county and each of the two cities permitting the county to furnish fire protection services in the disputed areas. The County Administrator and the County Council appeal.

*46 Section 5-7-60 of the Code of Laws of South Carolina (1976),¹ authorizes, but does not obligate, any municipality in this State to provide its services, except police protection services, by contract to individuals in all areas outside its corporate limits except those designated service areas of another municipality or political subdivision. Acting pursuant to Section 5-7-60, Darlington and Hartsville contracted with various persons to furnish fire protection services in areas outside their municipal limits. These areas are now included in the new fire protection district.

¹ Section 5-7-60 provides in part:

Any municipality may ... furnish any of its services ... in areas outside [its] corporate limits ... by contract with any individual, corporation, state or political subdivision ..., except within a designated service area ... of another municipality or political subdivision.... For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof....

The fire protection services provided by both municipalities in these areas, however, are far from comprehensive. Each municipality offers fire protection services to property outside its municipal limits only where the property lies within five road miles of its fire station; however, each municipality serves only those owners or tenants of property in the area who contract with it and pay it an annual fee. Both municipalities also charge an additional fee when they respond beyond their corporate limits to a fire involving a structure under contract.

**380 Neither Darlington nor Hartsville will respond beyond its corporate limits to either wildfires or automobile fires unless they threaten either structures then under contract or lives. The record does not indicate that either municipality provides contractual fire protection services to persons who either cannot afford the required fee or who neglect to pay it.²

² I do not agree with the majority that "[t]he record reflects that the Cities respond to fire calls for noncontract structures, at which time the owner generally agrees to pay the fee." [Emphasis mine]. Cecil Earl Ward, Darlington's city administrator, described Darlington's policy regarding calls

originating outside the city limits by stating that "[a] person has to be a member of a Suburban Rural Fire Protection [sic] before the City Fire Department will respond." When asked whether Darlington's fire department would respond outside the city limits to a fire involving a structure not under contract in a situation that was not life-threatening, Ward replied, "If they are a member of a Suburban Rural Fire Protection [sic], the Fire Department will respond. If they are not, we would not respond."

James Roland Ward, Darlington's mayor, was asked if Darlington's fire department would respond to any life-threatening situation regardless of membership. He said, "Yes, I'm sure [of] it. Well, no, I take that back. You said regardless of membership. If a call comes in and the person is not signed up on the sheet for fire coverage, then ... the Fire Department ... does not respond. If they did, then there would be no need to have the contract...."

Louis Matthew Cannarella, Hartsville's mayor, testified that he "ha[d] heard of occasions where the Fire Department has responded, got to a resident that was not a member ... the resident was there, agreed to pay whatever the fee was, and they went ahead and fought the fire." [Emphasis mine].

Regarding Hartsville in particular, only one-third of the *47 structures within the unincorporated area five road miles from its fire station receive fire protection services. In addition, the contract Hartsville has with subscribers covering property outside its corporate limits expressly reserves to Hartsville the right to respond to a call involving such property "only when the call will not jeopardize fire protection to property or persons within the City limits."

The County Council acted pursuant to Section 4-19-10 of the Code,³ when it established the new fire protection district. Before establishing the district, the county made no attempt to obtain agreements from Darlington and Hartsville to provide fire protection services in the unincorporated areas in which the latter were then furnishing such services pursuant to contracts.

³ Section 2 of Act No. 408 of 1984 expressly reenacted Chapter 19 of Title 4 of the South Carolina Code of Laws (1976). 63 STAT. 1818 at 1819 (1984). The reenacted Chapter includes Section 4-19-10 which prescribes the powers of county governing bodies regarding fire protection systems. Section 4-19-10 provides in part:

The governing body of each county has the following powers:

- (a) To establish, operate and maintain a system of fire protection.
- (b) To designate, subject to the provisions of § 4-19-20, the areas of the county where fire protection service

may be furnished by the county under the provisions of this chapter (referred to in this chapter as service areas); provided, however, that these service areas shall exclude those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of fire protection powers within the service area of such political subdivision and the sharing of the costs thereof. (Emphasis added.)

In granting summary judgment to the respondents and enjoining the County Administrator and County Council, the Circuit Court viewed as "[t]he critical question" the question of whether the areas "wherein [Darlington and Hartsville] *48 offer fire protection services under contract" are areas where fire protection is then being furnished by a political subdivision within the meaning of Section 4-19-10(b). [Emphasis mine.] It concluded that they are so and held that "such areas could not be included in any county fire district plan without a prior agreement with the municipality." This holding, which the majority affirms, is clearly erroneous.

Where the language of a statute is unambiguous, the language must be accorded its clear meaning. *Helfrich v. Brasington Sand & Gravel Co.*, 268 S.C. 236, 233 S.E.2d 291 (1977). Courts are not free to add words to a statute when interpreting it and they may not enlarge upon a statute's legislative design by giving the words used **381 in the statute too broad a meaning. *Harling v. Board of Comm'rs of Police Insurance and Annuity Fund*, 205 S.C. 319, 31 S.E.2d 913 (1944); *Mills v. Southern Railway Co.*, 82 S.C. 242, 64 S.E. 238 (1909).

Here, the majority, as did the Circuit Court, has read into Section 4-19-10(b) something that the General Assembly did not itself put therein and it has altered the statute's legislative design by giving to municipalities what amounts to a veto over a county's authority to create fire protection districts in areas where fire protection is not then being furnished but is merely then being offered.

Section 4-19-10(b) allows a county to establish fire protection systems and to designate the areas of the county where the county may furnish fire protection services. These service areas, however, must "exclude those areas where fire protection is then being furnished by some other political subdivision...." The statute does not require the exclusion of those areas where fire protection is "then being offered."

⁴ The words "furnish" and "offer" are not synonymous. See ROGET'S II: THE NEW THESAURUS at 409 and

647 (1980); W. BURTON, LEGAL THESAURUS at 238 and 355 (1980); J. RODALE, SYNONYM FINDER at 445 and 803 (1978) (reference books listing synonyms for the words "furnish" and "offer"); see also WEBSTERS: NEW UNIVERSAL UNABRIDGED DICTIONARY at 743 and 1242 (2d ed. 1983) (dictionary defining the words "furnish" and "offer" and listing their synonyms).

The majority incorrectly discerns the General Assembly's intent regarding Section 4-19-10(b) not from the language thereof but from the preamble to the act reenacting the chapter in the South Carolina Code of Laws that contains Section 4-19-10(b). See 63 STAT. 1818-19 (1984). The preamble uses the word "offered" while Section 4-19-10(b) uses the word "furnished." A court may resort to a statute's preamble to aid in the construction of the body of the statute, but it may not do so where, as here, the statute's language is plain and unambiguous. 73 Am.Jur.2d Statutes § 92 at 319 (1974); 82 C.J.S. Statutes § 349 at 730-31 (1953); see *Coosaw Mtn. Co. v. South Carolina ex rel. Tillman*, 144 U.S. 550, 12 S.Ct. 689, 36 L.Ed. 537 (1892) (express provisions in the body of an act cannot be controlled by the preamble and the preamble may be referred to when ascertaining the meaning of a statute where the statute is susceptible of different constructions).

*49 Thus, the only unincorporated areas excluded from the service area of the new fire protection district when it was established were those individual "areas outside the corporate limits" then under contract with either Darlington or Hartsville to receive fire protection services. These areas were the only unincorporated areas where fire protection services were "then being furnished by some other political subdivision" and, therefore, were the only unincorporated areas, other than the two rural fire districts, regarding which the county had to obtain agreements from the municipalities before it could provide immediate fire protection services thereto.

Section 5-7-60 must, if possible, be harmonized with Section 4-19-10 so as to avoid any conflict. See *Privette v. Grinnell*, 191 S.C. 376, 4 S.E.2d 305 (1939) (statutes should be construed together so that both may be given effect); 82 C.J.S. Statutes § 291(c) at 496 (1953) (two seemingly repugnant acts should be harmonized so as to permit both to be operative and effective, if possible). This can be easily accomplished and in such a way as to allow the county to provide fire protection services in the new fire protection district without impairing then existing contracts between the municipalities and their nonresident subscribers.

Contracts with Hartsville, as indicated above, are on a

year-to-year basis. The record suggests that the Darlington contracts are for a like term. When the county established a service area within the unincorporated areas where Darlington and Hartsville then "offered" fire protection services, the new fire protection district became obligated to "furnish" fire protection services to those individuals, corporations, and agencies who were not "then being furnished" such services by either Darlington or Hartsville pursuant to contract. Nothing whatever in Section 4-19-10 required the county to *50 obtain an agreement from the municipalities to provide fire protection services to those outside their corporate limits who had no contract with either municipality for such services and nothing in the statute gave to the municipalities the power to veto the county's right **382 to furnish fire protection services to nonresident nonsubscribers.

The new fire protection district, however, must furnish fire protection services to nonresident subscribers once their fire service contracts with either Darlington or Hartsville have terminated. This is because once their fire service contracts have ended they cannot be renewed since Section 5-7-60 expressly precludes a municipality from furnishing services "within a designated service area ... of another political subdivision." The new fire protection district is, by virtue of Section 4-19-10 and the action taken by the County Council pursuant thereto, the designated fire protection service area of the county. See *City of Myrtle Beach v. Richardson*, 280 S.C. 167, 169, 311 S.E.2d 922, 924 (1984) (Act No. 1167 of 1974, which Act No. 408 of 1984 reenacted and which was then and is now Section 4-19-10 of the Code, "clearly grants all authority" to the county governing body to designate service areas).

The effect of the majority's opinion is to leave those who own or rent property in the unincorporated areas within five road miles of the fire stations in the Cities of Darlington and Hartsville without comprehensive fire protection services.

It also leaves those who reside in the unincorporated areas in question without any representative voice regarding the availability, cost, or quality of fire protection services. Indeed, the only rights a nonresident can have regarding fire protection services are those rights that he or she might acquire by contract; and if the municipality chooses, for whatever reason, not to contract with the nonresident, the nonresident will have no fire protection rights at all.

I, therefore, would reverse the Circuit Court's order and remand the case for further proceedings.

City of Darlington v. Kilgo, 302 S.C. 40 (1990)
393 S.E.2d 376

Parallel Citations

393 S.E.2d 376

HARWELL, J., concurs.

End of Document

© 2012 Thomson Reuters. No claim to original U.S. Government Works.

TAB 3

§ 4-9-40. Power of county to contract for services within municipalities

Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. Provided, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

TAB 4

431 S.E.2d 580
Supreme Court of South Carolina.

CAROLINA POWER & LIGHT COMPANY,
Appellant,

v.

DARLINGTON COUNTY and Belinda Copeland, in
her official capacity as Treasurer of Darlington
County, Respondents.

No. 23867. Heard April 20, 1993. Decided June 1,
1993.

Electric utility filed suits seeking to recover taxes paid under protest to county for fire protection service district. The Circuit Court, Darlington County, James E. Lockemy, J., found that utility's nuclear power plant was properly included within district. Utility appealed. The Supreme Court, Toal, J., held that: (1) utility did not have contract with city sufficient to exclude plant from inclusion in county fire protection service district, and (2) inclusion of plant in district was not unconstitutional taking.

Affirmed.

Attorneys and Law Firms

****581 *6** John M. Milling, Darlington, for appellant.
Manton M. Grier, Robert Y. Knowlton and Theodore B. DuBose, of Sinkler & Boyd, P.A., Columbia, and James H. Lucas, Hartsville, for the respondents.

Opinion

TOAL, Justice:

This appeal arises from the trial court's order, in an action at law, tried before the judge in a tax protest suit. The trial court ordered that Carolina Power & Light's H.B. Robinson Nuclear Power Plant was properly included within the Darlington County Fire Protection Service District, and that the County Treasurer was entitled to recover all taxes which had been paid under protest, together with interest, for the inclusive tax years of 1988 to 1991. We agree and AFFIRM.

Facts

On April 6, 1987, Darlington County created a fire

protection district by ordinance pursuant to S.C. Code Ann. § 4-19-10 (1976). The district encompassed the county with the exception of the Cities of Darlington and Hartsville, and the Palmetto and South Darlington fire districts. The ordinance and creation of the district was challenged by the City of Darlington in an earlier suit, *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990). The trial judge in *Kilgo* enjoined the County of Darlington from including, in the new fire district, *7 those areas consisting of "the five mile radius service area" around the Cities of Hartsville or Darlington. The defendants in *Kilgo* moved under Rule 60(a), SCRCP, for a clarification of the Order to define "five mile radius" as five road miles from the existing fire stations. In the Rule 60(a) action, the appellant in the present case (hereinafter CP & L), moved to intervene to prevent the court from adopting the "five road miles" definition of "five mile radius." This intervention had the effect of addressing whether CP & L's H.B. Robinson Nuclear Power Plant (hereinafter Plant) would be physically included in Hartsville's fire protection service area.1

1 CP & L's H.B. Robinson Nuclear Power Plant is located more than five road miles from the Hartsville Fire Department; however, it is located less than five miles as the "crow flies" from the City of Hartsville.

In accordance with the trial court order which we affirmed in *Kilgo*, the County amended the fire district's boundaries to comport with the five road miles definition of service area. On October 31, 1988, the county provided by ordinance for the issuance of a bond anticipation note in the amount of one million, five hundred thousand dollars (\$1,500,000), to purchase fire equipment. The procurement of new equipment included two new fire trucks and a complete upgrade of equipment and facilities at the Pine Ridge Fire Station which is located less than a mile from the CP & L Plant.

In 1989, CP & L commenced several actions challenging the inclusion of the Plant in the Darlington County Fire Protection District (hereinafter district) and seeking to recover taxes paid in protest to the county for the tax year of 1988. Darlington County raised the statute of limitations as a defense and the trial court granted a summary judgment which was appealed. In *Carolina Power & Light Company, v. Darlington County*, 304 S.C. 525, 405 S.E.2d 823 (1991), we held that the statute of limitations which the county relied on was applicable to the creation of the district and not to a dispute concerning the boundaries established for the district. We focused on the narrow statute of limitations issue and reversed and remanded the summary judgment.

Carolina Power & Light Co. v. Darlington County, 315 S.C. 5 (1993)

431 S.E.2d 580

CP & L commenced other tax protest suits for the years 1989, 1990, and 1991 which were consolidated and heard by Judge James E. Lockemy during a non-jury term of court. It *8 is from Judge Lockemy's Order dated August 1, 1992, that CP & L appeals.

Law/Analysis

The Appellant raises a multitude of issues which center on the factual findings and conclusions of the trial judge concerning **582 a fire service contract. These factual issues are all encompassed in the question of whether CP & L had a valid contract for fire protection service which would prevent the inclusion of CP & L in the new Darlington Fire Protection District under S.C.Code Ann. §§ 4-19-10 and 5-7-60 (1976). The remaining issue disputes the trial judge's conclusion that CP & L's inclusion in the fire district was not an unconstitutional "taking" of CP & L's property.

Standard of Review:

1 2 An action for the recovery of ad valorem taxes paid under protest is an action at law. *Elmwood Cemetery Association v. Wasson*, 253 S.C. 76, 169 S.E.2d 148 (1969); *Hibernian Society v. Thomas*, 282 S.C. 465, 319 S.E.2d 339 (Ct.App.1984). In an action at law tried without a jury, the trial judge's findings of fact will not be disturbed on appeal unless the findings are found to be without the reasonable support of the evidence or based on some error of law. *Shelly v. Shelly*, 253 S.C. 238, 169 S.E.2d 764 (1969); see also *Lloyd v. Walters*, 276 S.C. 223, 277 S.E.2d 888 (1981). In *American Mutual Fire Ins. Co. v. Reliance Ins. Co.*, 268 S.C. 310, 233 S.E.2d 114 (1977), we held that where a judge sits without a jury, the judge is a substitute for the jury, and his findings will be sustained if supported by any evidence.

Existence of a Contract:

In *Kilgo, supra*, we interpreted S.C.Code Ann. §§ 4-19-10 and 5-7-60 (1976) and held that:

[the] legislative intent [of §§ 4-19-10 and 5-7-60] was to allow municipalities to continue to offer fire protection service in areas previously served under contract, and that such areas could not be included in any county district plan without prior agreement with the municipality.

Id. at 43, 393 S.E.2d at 378 (emphasis added). We went on to say that:

*9 [i]t is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection powers must be entered into prior to the creation of a county fire protection district.

Id. at 44, 393 S.E.2d at 379.

In *Carolina Power & Light Co. v. Darlington County, supra*, we viewed the case from an entirely different posture. On appeal from a summary judgment, we were forced to examine the scope of the applicable statute of limitations. The issue of the existence of a contract was not addressed except as an allegation made by CP & L.

3 The real question before us today is the existence of the contract. CP & L asserts that the trial judge erred in concluding that a specific type of contract was required to comport with the statutes. The judge concluded that the agreement between CP & L and the Hartsville Fire Department was not a valid contract, and therefore, not a contract as contemplated by §§ 4-19-10 and 5-7-60. The judge equated the alleged contract to a mutual aid agreement which was not a contract as contemplated by the statutes. Further, the judge found that the Hartsville Fire Chief lacked capacity to enter into this type of contract on behalf of the city.

The statutes as interpreted in *Kilgo, supra*, clearly require a valid contract with the city to avoid inclusion in the county fire district. As we stated in *Kilgo*, the legislative intent of the statutes is to allow counties to establish taxing districts for fire protection services without invading the province of another political subdivision or fire district. By necessity, it is required that a contract be in existence to prevent an encroachment by a county fire district when boundaries are established. The use of some public authorization or ordinance by the appropriate municipal government is critical to put a county on notice, and to insure that there is no inclusion of an area already receiving fire service.

CP & L concentrates on valid consideration to support the contract, yet the real problems stem from the capacity or authority of the person signing the agreement. In 56 Am.Jur.2d, *Municipal Corporations*, § 504 at 556 (1971), it states that:

**583 [a] municipal corporation is not bound by a contract made *10 in its name by one of its officers or by a person in its employ, although within the scope of its corporate powers, if the officer or employee had no authority to enter into

such a contract in behalf of the corporation.

Id.

The relevant evidence in the record establishes that CP & L's payments to the Hartsville Fire Department are determined by an internal CP & L guideline, and not by a fee schedule set up between CP & L and the fire department. Further, there is no agreement between CP & L and the Hartsville Fire Department concerning the timing or the amount of the annual payment made by CP & L. The Pine Ridge Volunteer Fire Department produced receipts and testified that, until 1987, Pine Ridge received a similar payment of funds from CP & L, even though the Pine Ridge volunteer fire department was terminated from the Plant's fire plan in 1984. CP & L's expert witness was told, by representatives of CP & L, that the payments made to the Hartsville Fire Department were voluntary.

CP & L would characterize the difference in contracts as a Nuclear Regulatory Commission (NRC) requirement. This is of little aid since there was no showing that the NRC required the contract to be signed by any other party than the one normally authorized to bind the City, or that payments must be made directly to the fire department. The City of Hartsville's standard fire protection contract requires both the Mayor's signature, and payment of fees directly to the city. The Hartsville Fire Chief, paid directly by CP & L, used the money to fund social functions as well as buying fire equipment.

In *City of North Charleston v. North Charleston Dist.*, 289 S.C. 438, 346 S.E.2d 712 (1986), this Court held that a person who contracts with a municipality is charged with the knowledge of its limitations and restrictions in making contracts. On the present facts, this rule put CP & L in a position to either insure that an ordinance or resolution existed, or at a minimum that a contract was made through the Mayor. Moreover, because there is a large discrepancy in the contract procedures between CP & L and the city's other recipients of fire protection service, there is ample evidence to support the *11 judge's findings. The Fire Chief's lack of authorization from the municipal government, along with the procedural variance, is fatal to the existence of capacity to enter into a contract for fire protection services.

4 In the absence of capacity to contract, CP & L argues that the city ratified the agreement. At trial, CP & L proffered the city attorney's testimony, which they contended was sufficient to show ratification. Generally ratification of a municipal contract must be "fully and clearly proved; and where there is a conflict of evidence on the issue of ratification, the sufficiency of proof is a question of fact, ..." 63 C.J.S. *Municipal Corporations*, § 1009(b)(1) at 599 (1950).

The acts which CP & L point to as ratification are mostly acquiescence by the city. Ratification of a contract "cannot be implied from mere inaction, or from a mere failure to disaffirm the contract within a reasonable time, ..." 63 C.J.S. *Municipal Corporations*, § 1009(b)(2) at 600 (1950). Because this was a question of fact, and there is evidence in the record to support the judge's conclusion, it was not error for the court to conclude that a contract did not exist between CP & L and the City of Hartsville.

Unconstitutional Taking:

5 The final issue raised by CP & L is whether the inclusion of the Plant inside the fire district is an unconstitutional taking. The decision in *Mills Mill v. Hawkins*, 232 S.C. 515, 103 S.E.2d 14 (1957), is especially enlightening. In *Mills Mill*, we held that to justify an assessment of benefits to particular lands, it is not essential that the benefits be direct or immediate or that for every payment there must be an equal benefit. *Id.* CP & L asserts that the unconstitutional taking occurs because the inclusion confers no benefits on CP & L. CP & L would have us hold that the payment to the county is an assessment rather **584 than a tax. The argument which CP & L makes is similar to the property taxpayer who does not have school-age children.

The dispositive question is answered by the evidence presented by the county showing the benefits accruing to CP & L from inclusion in the district. The testimony of Samuel Hobbs, as the expert for Darlington County, establishes both direct and indirect benefits to CP & L. Hobbs testified that the *12 placement of nuclear facilities in rural areas increases the demand on all county services. Hobbs noted that hazardous waste is transported in and around the county, CP & L maintains power lines throughout the area, and that the employees who live in the area receive the county's fire protection.

Another benefit to CP & L is that the company can readily attract employees to an area which is capable of supporting the influx of people. The overall quality of life for employees is a basis for recruiting and maintaining a strong work force. Much discussion was made at oral argument about the applicability of the ISO insurance rating. It is at least noteworthy that if the ISO rating is reduced, then there is a direct benefit to the individual employee and an indirect benefit to CP & L.

CP & L has complained of the poor fire service provided by Pine Ridge, but since the creation of the district, the fire service has improved. Although initially it appears that a certain minor detriment may flow to CP & L, it is clear that the district is willing to train and purchase whatever equipment is required to provide the necessary

Carolina Power & Light Co. v. Darlington County, 315 S.C. 5 (1993)

431 S.E.2d 580

support. The training which the district is required to accomplish is set out in the Hartsville Indoctrination Training Plan which, as of 1989, only requires two hours of instruction. Pine Ridge should have no trouble upgrading their training as well as their overall fire fighting proficiency.

The "assessment rather than a tax" argument fails because the benefits conferred on CP & L are not distinguishable from the general benefits enjoyed by the surrounding community. *Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443 (1984). The fire study, and the text of the ordinance establishing the fire district, clearly show that a serious need existed to upgrade fire protection and coverage throughout the county.

There is ample evidence in the record to support the judge's findings and conclusion that there was not a

End of Document

contract sufficient to exclude the Plant from the fire district. Likewise, we find no error in the trial judge's conclusion that there was not an unconstitutional taking. Accordingly, for the reasons stated, the decision of the trial court is AFFIRMED.

HARWELL, C.J., FINNEY and MOORE, JJ., and C. TOLBERT GOOLSBY, Jr., Acting Associate Justice, concur.

Parallel Citations

431 S.E.2d 580

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Commissioners of Public Works of the
City of Laurens, South Carolina, also
Known as the Laurens Commission of
Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-30-309

PLAINTIFF'S REPLY BRIEF

Plaintiff submits this brief in reply to the points raised by Defendant in its Memorandum of Law dated April 3, 2014.

**I. LCPW DOES BUDGET TO SUPPLY NATURAL GAS
TO THE DISPUTED AREA.**

Throughout this case, Defendant has discussed the point that LCPW has to have supply lines in the disputed area in order to provide natural gas service to the City of Laurens. However, Defendant has not pointed to any case or any reason as to why that would diminish LCPW's ability to establish a designated service area outside the City of Laurens where it has supply lines. Presumably, the reason any city takes advantage of Section 5-7-60 in selling natural gas, water (as in *Calcaterra v. City of Columbia*, 315 S.C. 196, 432 S.E.2d 498 (Ct.App. 1993)), electricity or fire protection is because the city has excess capacity to do so after it has met its obligation to provide such services within the city. The only evidence in the record is that LCPW does provide natural gas service by contract in the disputed area, and that it has budgeted to do so. (Exhibit 8).

Scott Heath of Heath & Associates testified that the reason the additional supply lines were added in the disputed area was to expand the entire system, not just to support providing natural gas

GREENVILLE 313076v1

service in the City of Laurens. On the other hand, prior to the institution of this lawsuit, Fountain Inn did not have any supply lines in the disputed area. Furthermore, the reason that the LCPW can and does provide service on an ongoing basis in the disputed area is because it has budgeted to have the facilities, equipment and personnel to do so.

Fountain Inn has also brought up Clinton-Newberry Natural Gas several times in this case. Clinton-Newberry has no relevance here. It is not seeking to serve natural gas in the LCPW's designated service area. While it did make a bid to serve ZF, it only did so after Fountain Inn stated that it would. However, it has not further asserted any right to serve in the disputed area.

Fountain Inn raises a point that is confusing: that it has spent money to build natural gas lines outside its city limits and that the industrial park is 3 miles from Fountain Inn and 15 miles from Laurens. It is not clear what point Fountain Inn is trying to make. Section 5-7-60 deals with the establishment of a designated service area, which in this case has been in existence for over 20 years. Nothing in the statute provides that the statute may be ignored or modified if, eventually, another municipality is closer to a potential customer than the municipality that has previously established the right to serve.

II. LCPW IS THE "GOVERNING BODY" REFERRED TO IN THE STATUTE.

Respectfully, Fountain Inn is just mistaken here, and is misreading the statute. Section 5-7-60 states in pertinent part: "For the purposes of this section designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." S.C. Code § 5-7-60.

As an initial matter, the identity of the "governing body" would only come into play if the Court were having to make the determination that that funds to provide the particular service have been applied for, as opposed to determining that the particular service is being provided or is

budgeted.¹ Thus, in *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984), because the Sewer District presented an affidavit that it had constructed sanitary sewerage collection lines, transmission lines and treatment facilities to handle the waste water generated by the users of the sewerage system located within the Sewer District, it had a “designated service area” under S.C. Code Ann. § 5-7-60. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261. There was not a discussion as to certification by the governing body because the undisputed evidence was that the Sewer District had the facilities in place to provide the particular service.

Again, in *City of Darlington v. Kilgo*, 302 S.C. 40, 393 S.E.2d 376 (1990), the analysis stopped with the recognition that that the cities of Darlington and Hartsville offered the service by contract in a five-mile radius outside the cities’ limits. Just as in this case, the cities of Darlington and Hartsville did not have governing jurisdiction in the five-mile radius outside the cities. However, because they offered the service by contract, the cities had a “service area” under the language of Section 4-19-10 that is similar to the language in Section 5-7-60.

That is the situation here. Each of the LCPW witnesses, Mr. Smoak, Mr. Satterfield, Mr. Heath and Mr. Young, testified that the LCPW has provided and continues to provide natural gas service by contract throughout the territory at issue in this case, and there has never been a question about that in this case.

Furthermore, for the statute to make sense, the “governing body” that certifies has to be the municipality that has applied for the funds to provide the service. Why would Laurens County have the power to certify that the City of Laurens has applied for funds to provide natural gas? The entire

¹ Should the Court find that the better reading of the statute is that the governing body must also certify that providing the service has been budgeted, that was done in this case as well. See Exhibit 8.

statute deals with a municipality providing a service outside its city limits. Fountain Inn's assertion that in *Kilgo*, Darlington County was the "governing body" referred to in that case is not correct.

Respectfully, Fountain Inn misstates the outcome of that case. Fountain Inn states at pages 5-6 of its brief: "However, the Court said that the county had the authority to provide fire protection in the disputed area (outside the city limits but in the county); and the cities and the county had to work out an agreement on how the cost of the service would be provided within the disputed area."

On the contrary, the Court affirmed the trial court's holding enjoining the County Administrator and members of the County Council "from creating a fire district which included property within five miles of the Cities' boundaries unless and until the parties executed an agreement." *Kilgo*, 302 S.C. at 42, 393 S.E.2d at 377. The Court also held "Since the legislature did not qualify the nature or extent of the 'fire protection services...offered,' this Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a 'service area.'" *Id.* at 43, 393 S.E.2d at 378. The members of the Darlington County Council and the County Administrator lost that case because the cities had the right to maintain their service areas outside their corporate limits, and the county was not empowered to stop them.

Under Section 5-7-60, it is the municipality or other political subdivision that may give permission for another municipality to serve within the municipality or political subdivision's designated service area, which can clearly be outside the city's limits. *See Kilgo*, 302 S.C. at 43, 393 S.E.2d at 378. Therefore, LCPW respectfully submits that it is the governing body of the municipality that certifies that funds have been applied for. In this case, that is the LCPW.

In its argument on this point, Fountain Inn argues on page 6 of its brief that the Greenville Water System could not prohibit another city from supplying water to a customer outside the city limits of Greenville where the City of Greenville is already supplying water. However, Fountain

Inn cites no authority for this proposition, and the LCPW respectfully submits that that proposition is not correct.

III. LCPW DOES SERVE THE ENTIRE DISPUTED AREA.

The City of Fountain Inn's argument misapprehends the statute and the case law regarding the establishment of a designated service area. As an initial matter, each witness from the LCPW, Coleman Smoak, Dale Satterfield, Scott Heath and John Young testified that the LCPW sells natural gas by contract throughout the disputed territory and has done so since before 1992. To the best recollection of LCPW, Mr. Young testified that every customer of the LCPW enters into a written agreement with the LCPW. Mr. Satterfield testified that LCPW's service contracts extend all along the border of the territory. That testimony was not objected to and that fact has never been an issue in this case. Prior to Fountain Inn's incursion into the territory over LCPW's objection and after this action had been filed, LCPW was the only provider of natural gas in the disputed area.

Fountain Inn raises a good point, however: What is the designated service area? It is true that every single parcel within a designated service area may not be receiving the particular service from the municipality. Also, contracts begin and end. Therefore, does the designated service area change on a potentially daily basis?

That question was answered in *Kilgo*. In that case, fire protection from the cities was only available upon the payment of a fee, such coverage was only provided for structures, and less than one-third of the property owners were covered by contract. 302 S.C. at 42, n.1, 393 S.E.2d at 376, n.1. In his dissent, Acting Justice Goolsby agreed with the position taken by Fountain Inn in this case -- that reading Section 5-7-60 and Section 4-19-20 together, the service area that had to be excluded from the fire district included only those properties that the cities had under contract, and

that when those contracts expired, those properties would then be included within the fire district. 302 S.C. at 49, 393 S.E.2d at 380.

The problem with that position as applied to this case is two-fold: one is that the majority disagreed with Judge Goolsby. The majority held: "[T]his Court is constrained to hold that the five-mile radius protected by the Cities under contract constitutes a 'service area.'" *Id.* at 43, 393 S.E.2d at 378. This opinion was rendered with the full knowledge that less than one-third of the property owners in the areas outside the cities had a contract. The majority's conclusion makes sense. The statutes speak of "service areas" which indicates a contiguous area. Also, while fire protection may not need a lot of unique infrastructure, other services, such as natural gas and water and sewer, do require it. It would be unworkable if the service area that a municipality had the right to serve changed on a weekly or monthly basis as contracts expired.

The other problem with Fountain Inn's position is that it relies on *Carolina Power & Light*, 315 S.C. 5, 431 S.E.2d 580 (1983), for propositions that are not in that case or are not applicable to this case. In *Carolina Power & Light*, the Supreme Court noted that the defendants in that *Kilgo* had moved for and had obtained an order under Rule 60(a) establishing that the 5-mile radius of the Cities' service area was 5 road miles and not 5 miles "as the crow flies." *Id.* at 7, 431 S.E.2d at 581. That order had the effect of taking CP&L's H.B. Robinson Nuclear Power Plant out of the City of Hartsville's service area and putting it in the new fire district. *Id.* CP&L wanted to stay in the city's service area. *Id.*

Reviewing Section 5-7-60 and Section 4-19-10 together, the Court concluded that a contract was required to be in place "to prevent an encroachment by a county fire district *when boundaries are established.*" *Id.* (emphasis added). The Court went on to conclude that because the person who signed the agreement from the City of Hartsville was without authority to do so, the contract

between CP&L and the City of Hartsville was not valid, therefore, CP&L was not in the City of Hartsville's service area for fire protection. *Id.* at 9-10, 431 S.E.2d at 583.

Carolina Power & Light does not stand for the proposition that a designated service area under Section 5-7-60 only extends to customers with whom a municipality has an active contract. To have so held would have overruled or severely undermined *Kilgo*, which *Carolina Power & Light* expressly did not do. Also, as pointed out above, the Court in *Carolina Power & Light* held that the issue is where there are contracts in place when the boundary lines for fire districts are established. *Carolina Power & Light* does not imply that the service area is constantly changing as contracts are added or are terminated.

Also, the Court in *Kilgo* and in *Carolina Power & Light* had to harmonize Section 5-7-60 and Section 4-19-10. Thus, the Court found it necessary to find a contract in place between CP&L and the City of Hartsville before adding CP&L to Hartsville's service area. 315 S.C. at 9, 431 S.E.2d at 582. That is not the case with Section 5-7-60 alone. In Section 5-7-60, a "designated service area" is an area "in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." Therefore, in *Spartanburg Sanitary Sewer District*, that the Sewer District had the facilities in place to provide the service meant that the Sewer District qualified as a "designated service area" under S.C. Code Ann. § 5-7-60. *Spartanburg Sanitary Sewer Dist.*, 283 S.C. at 72, 321 S.E.2d at 261.

In this case, the evidence is that prior to 2011, the LCPW was the only provider of natural gas service in the disputed area. LCPW has had contracts in place throughout the area since before 1992. The testimony was that LCPW has the facilities and infrastructure to serve the area. Further, the governing body of the municipality that provides the service, the LCPW, certified that it has budgeted to serve the area and has applied funds of its Combined Utility System to serve the

disputed area. Exhibit 8. Therefore, the disputed area meets every criterion of being a designated service area under Section 5-7-60.

Finally as to this point, again, Fountain Inn has raised Clinton-Newberry throughout this litigation. Clinton-Newberry was not sued because, since the ZF contract matter concluded, Clinton-Newberry has not raised any further issues. There is no evidence that Clinton-Newberry is attempting to serve natural gas customers in the LCPW's designated service area. That is why it is not a party to this case.

IV. THE APPLICATION OF SECTION 5-7-60 IS NECESSARY TO THIS CASE

"S.C.Code Ann. § 5-7-60 (1976) contains provisions *both granting and delimiting* the exercise of corporate functions of municipalities outside their corporate limits." *City of Newberry v. Public Service Com'n of South Carolina*, 287 S.C. 404, 339 S.E.2d 124 (1986) (emphasis added)." Therefore, it is absolutely necessary to apply Section 5-7-60 to this case, though it is understandable why Fountain Inn does not want this Court to do so.

Prior to 2011, the LCPW and Fountain Inn respected each other's service areas. However, a new gas manager had come to Fountain Inn believing that natural gas service is a free-for-all. One thing is clear from Section 5-7-60 – the providing of municipal services outside city limits is not a free-for-all. The statute and the cases applying it make it clear that the service (or budgeting to serve or applying for funds to serve an area) give the municipality providing the service exclusive rights in the area insofar as other municipalities are concerned.

Further, Fountain Inn's claim that LCPW has attempted to assert a monopoly over a large bulk of Laurens County by passing a resolution is way off base. This is an area the LCPW has served for decades, and Fountain Inn has not. This service was provided through cooperation between the two cities until Fountain Inn decided to write its own rules.

Fountain Inn's assertion that *Kilgo* and *Carolina Power & Light* stand for the proposition "that where two governmental entities had the authority to provide a service, it was incumbent on them to do so jointly[,]" (Fountain Inn Brief, p. 8) is not correct. In *Kilgo*, the majority was answering Acting Justice Goolsby's charge that the majority was giving municipalities a veto power over a county's authority to create fire protection districts in areas where fire protection was not being furnished but was merely being offered. *Kilgo*, 302 S.C. at 48, 393 S.E.2d at 381. The majority opinion countered:

It is only when an existing municipal service area within the county is affected that an agreement for the joint exercise of fire protection must be entered into prior to the creation of a county fire protection district. This provision does not embody veto power, but allows both entities to furnish service with a determination of how the costs thereof shall be shared.

Id. at 44, 393 S.E.2d at 44-45. That does not stand for the proposition that the two entities have to share service areas. In fact, the Court held that they do not. That quotation stands for the proposition that a county cannot invade an area previously served by a municipality without the municipality's agreement – prior to the creation of the county fire protection district.

Further Section 5-7-60 does not use the word "agreement." That word is used in Section 4-19-10 and relates to fire districts. The importance of *Kilgo* to this case is that it reinforces that the point that Section 5-7-60 is the statute that allows municipalities to provide services outside their corporate limits. Also, in *Kilgo*, the Supreme Court recognizes that a municipality may establish a service area outside its corporate limits by offering the service. It also establishes that a municipality may exclude another governmental provider from providing a service in an area *outside the municipality's corporate limits*, if the municipality is already offering that service. This case however, only involves Section 5-7-60, and Section 5-7-60 uses the word "permission." One

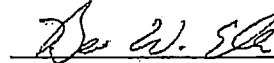
municipality may not provide services in another municipality's designated service area without the other municipality's "permission."

CONCLUSION

WHEREFORE, Plaintiff prays that the Court grant judgment in its favor.

Respectfully submitted

MCNAIR LAW FIRM, P.A.



Bernie W. Ellis

SC Bar No. 64841

Post Office Box 447

Greenville, South Carolina 29602

Tel. (864) 271-4940

Fax (864) 271-4015

Attorney for Plaintiff

Greenville, South Carolina
April 14, 2014

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the City of
Laurens, South Carolina, also known as the
Laurens Commission of Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2011-CP-30-309

REPLY

MEMORANDUM OF LAW

CITY OF FOUNTAIN INN

The Defendant, the City of Fountain Inn ("City") would respectfully submit the following Reply Memorandum of Law in support of its position that judgment should be granted in its favor.

I. SECTION 5-7-60 - LCPW IS NOT THE "GOVERNING AUTHORITY"

In its post trial memorandum of law, LCPW has cited this Court with no case law where the Supreme Court addressed the interpretation of S. C. Code §5-7-60 when the parties to the litigation were cities, both of which were serving an area outside of their corporate limits. Indeed, there are none, which is precisely the point raised by Fountain Inn in its post trial memorandum of law.

The cases establish that the correct interpretation of the statute's use of the "governing body thereof" is the governing body of the place where the service is rendered. A governmental entity may provide services inside a city (for example water or sewer) unless the city certifies that it has budgeted funds for the provision of the same service because the city is the "governing body thereof" within its corporate limits. City A can provide natural gas services inside of City B unless City B certifies that it has budgeted funds for the provision of natural gas

service. The City of Greenville provides water to Fountain Inn. Fountain Inn provides natural gas to portions of the City of Simpsonville.

S.C. Code §5-7-30 is the general statute that sets forth the powers conferred upon municipalities. The statute states: "Each municipality ... may enact regulations, resolutions, and ordinances, ... including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it ..." [Emphasis added] Therefore, there can be no serious argument that a municipality has no governing authority outside of its corporate limits.

Indeed, §5-7-60 contains the following proviso: "*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." [Emphasis added] The statute requires "governing body" "concerned" to grant permission. Pursuant to §5-7-30 a city has no governing authority except within its corporate limits. Therefore, in order for LCPS to be the "governing body" "concerned" the area must be inside the city limits of Laurens.

As stated previously, it was not the interpretation of "designated service area" in *City of Darlington v. Kilgo*, 302 S.C. 40, 42, 393 S.E.2d 376, 377 (1990) that was dispositive. Rather it was that another statute, S.C. Code §4-19-10 which *required* the county to "exclude those areas where fire protection [was] then being furnished by some other political subdivision ..." The case wrestled with the alleged conflict between §5-7-60's "designated service area" and the requirements of §4-19-10 because §4-19-10 provided for "the joint exercise of fire protection

powers within the service area of such political subdivision and the sharing of the costs thereof."

The Supreme Court found no conflict between the statutes even though §5-7-60 was claimed to establish for the cities an absolute and exclusive designated service area, the same argument LCPW makes here. On the other hand, §4-19-10 discussed the "joint" provision of fire service. The Court in *Kilgo* stated that this "provision does not embody veto power, but allows both entities to furnish service with a determination of how the costs thereof shall be shared."

This is consistent with the provisions of the S.C. Constitution, Article VIII, § 13 (A): "Any ... municipality ... may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof."

In its brief, LCPW *acknowledges* that it intends this Court to construe §5-7-60 so as to make it the "governing body" in an area that is 15 miles away from its corporate limits. LCPW argues that:

Plaintiff submits that the words of the statute and its interpretation by the South Carolina Supreme Court and the Court of Appeals mean that because the LCPW has furnished natural gas in a specific area outside its city limits, that area is its designated service area, and the City of Fountain Inn may not serve customers in that area without first obtaining permission from LCPW. It has long been the policy of South Carolina that "there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction and privileges." *Wagner v. Smith*, 221 S.C. 438, 71 S.E.2d 1 (1952) (internal citations omitted). Section 5-7-60 reflects that policy.

Wagner v. Smith involved two municipalities, each of whom challenged the legal status of the other concerning Folly Beach, an area that comprised 2.7 square miles and had 675 year round inhabitants. The Town of Folly Island and the Town of Folly Beach each claimed that it was the rightful municipal corporation over Folly Island. The holding cited by LCPW is that there cannot be two municipal corporations in the same city. It has nothing to do with the

authority of a city outside its corporate limits and the case pre-dated Home Rule. Yet LCPW cites *Wagner v. Smith* claiming that it is the governing authority in the disputed area ("exercising ... powers, jurisdiction and privileges") over it. This is contrary to the S.C. Constitution and §5-7-30.

The dispute in *Kilgo* also involved a small area (5 miles) immediately adjacent to the city limits. Here, LCPW contends that it can claim the vast bulk of the entire county as its service area. The City of Laurens is 15 miles (total land area) as the crow flies from the disputed area. Fountain Inn is 3 miles from the disputed area.

The City of Laurens has 9,000 residents and occupies only 10.6 total square miles.¹ The City of Fountain Inn occupies 5.5 square miles and has 6,000 residents.² The total land area of Laurens County is 724 square miles.³ This illustrates the magnitude of the territory LCPW claims to "govern" by the fiat of its Board of Commissioners. Not a single person or business in this area can vote on any issue affecting LCPW, yet LCPW claims that it has a right to a monopoly on the provision of natural gas outside of its corporate limits.

Finally, LCPW wants to have it both ways. It insists that this Court recognize a territorial boundary that the City of Fountain Inn may not cross. It insists on an injunction to prohibit Fountain Inn from crossing the boundary and it also wants the Court to order that Fountain Inn relinquish customers on its side of the boundary. However, LCPW does not believe that the customers it serves north of the alleged boundary should be relinquished to the City of Fountain Inn. LCPW claims either that it has not crossed the boundary or that there was an

¹ http://en.wikipedia.org/wiki/Laurens,_South_Carolina

² http://en.wikipedia.org/wiki/Fountain_Inn,_South_Carolina

³ http://en.wikipedia.org/wiki/Laurens_County,_South_Carolina

agreement for it to cross the boundary.⁴ However, LCPW presented no evidence whatsoever that the city of Fountain Inn, by vote of its city council, granted permission to LCPW to breach its territory.

LCPW wants this Court to place its stamp of approval on its unilateral efforts to claim territory for itself and ignore where it has also invaded the territory of others.

II. LCPW HAS NOT BUDGETED FUNDS FOR THE PURPOSE OF PROVIDING SERVICE IN THE AREA

This is a fact issue and it cannot really be in dispute. All of the natural gas providers in the upstate of South Carolina get natural gas from TRANSCO. TRANSCO has a large natural gas pipeline that runs from Texas to New England. LCPW, Fountain Inn, and Clinton Newberry Natural Gas Authority⁵ "tap" into the TRANSCO line inside the city of Fountain Inn as the only source of natural gas. Piedmont Natural Gas also gets its supply of natural gas from TRANSCO but its tap is outside the city of Fountain Inn.

As is shown on Tab 1, LCPW claims 100% of Laurens County as its service area.⁶ The problem is that Clinton-Newberry natural Gas Authority also claims a vast portion of Laurens County to be within its service area, including the disputed territory that is just north of the Town of Gray Court. Tab 2.⁷ If indeed the disputed area is LCPW's "designated service area" pursuant to §5-7-60, why isn't Clinton Newberry Natural Gas Authority a party to this litigation?

⁴ The blue dots or placemarkers in the maps at Tab 5, are customers Fountain Inn contends LCPW is serving in Fountain Inn's "territory."

⁵ Clinton Newberry Natural Gas Authority was created by Act No. 789 of the 1952 Acts of the General Assembly, 47 St. at L. 1958. See, *Welling v. Clinton Newberry Natural Gas Authority*, 71 S.E.2d 7, 221 S.C. 417 (S.C. 1952)

⁶ https://www.lcpw.com/service_territory.html

⁷ <http://www.cnmga.com/aboutus.html> Service area shaded in blue.

In its brief, LCPW states: "Prior to the Home Rule Act, and specifically with respect to Section 5-7-60, there were no generally applicable laws governing the furnishing of services by municipalities outside of their corporate limits." It cannot claim, therefore, that the natural gas supply line that it constructed in the 1950's was to supply natural service to the disputed area. LCPW had to build a supply line from Fountain Inn to Laurens to be able to supply natural gas to the city of Laurens.

In the mid 1980's, LCPW decided to build a second supply line from Fountain Inn to the city of Laurens. In early 1985, LCPW decided it needed to construct a second supply line. Smoak testified that the line was "a new feeder line, a 10-inch natural gas line that would run from our tap with Transco, which is up north of Fountain Inn, and run all the way to the City of Laurens." (Tab 3, Smoak, Page 10, Line 1) The purpose of the new line was "to give [LCPW] a second feeder from Transco...." (Tab 4, Smoak, Page 11, Line 3) The investment made by LCPW had little to do with providing natural gas to customers near Fountain Inn but far more with balancing its system and securing a reliable supply of natural gas for the city of Laurens.

LCPW's engineer confirmed that at trial. On cross examination he admitted that LCPW would not have spent the money to build such large lines in northern Laurens County if the source of natural gas was south of the city of Laurens. In other words, the reason for constructing the lines was to get to the source of natural gas - TRANSCO's transmission lines in Fountain Inn.

As can be seen on Tab 5, today, northern Laurens County is primarily rural and agricultural. It is not developed. In the 1980's and certainly in the 1950's, the disputed area in

northern Laurens County was primarily rural - homes and farms. It remains so even today with the notable exception of Owings Industrial Park.⁸

The *only* way LCPW can supply natural gas to the city of Laurens⁹ is the tap into the TRANSCO pipeline that happens to be located in Fountain Inn. LCPW denies that Clinton Newberry has the right to serve natural gas inside this area even though Clinton Newberry has supply lines in the area and it can supply natural gas to customers from those lines.

III. THERE IS NO DESIGNATED SERVICE AREA

LCPW cannot have a monopoly in northern Laurens County - or the entire county - as it is advocating. Fountain Inn does not claim that it can provide natural gas service more economically because the disputed area is 3 miles from its border.¹⁰ The significance of the proximity of Fountain Inn is that, as in *Kilgo*, it represents an area immediately adjacent to its city limits. It also illustrates the fallacy of LCPW's argument that because it had to build supply lines originating in Fountain Inn that it therefore acquired this area as its designated service area.

LCPW has already acknowledged that there is no designated service area. LCPW filed suit against Fountain Inn alleging that there was a contract in existence wherein it acquired the territory as its exclusive territory. If indeed, §5-7-60 made the area its designated service area, why was a contract necessary? Why did the general manager of LCPW tell Fountain Inn that he

⁸ This can also clearly be seen by reference to Google Maps (location of the ZF Transmissions plant) and moving the map around in satellite view: https://maps.google.com/maps?q=34.646766,-82.160482&hl=en&ie=UTF-8&ei=CAdMU_r5PIyc0gHEmYHoDw&ved=0CAkQAU

As confirmed by LCPW's engineer at trial, there are no housing developments in this part of Laurens County. The map also indicates how far the industrial park is away from the City of Laurens.

⁹ LCPW is part of the city of Laurens. A commission of public works and a city council are both considered agencies of a municipal government. "[T]he board of commissioners is not in any sense a separate corporation but a mere municipal agency, through whose management and control the General Assembly has required that the municipality shall operate and manage its waterworks...." *City of Spartanburg v. Blalock*, 223 S.C. 252, 259, 75 S.E.2d 361, 364 (1953).

¹⁰ See, Brief of LCPW, Page 10.

would prepare a resolution for adoption by the Commissioners of LCPW and the city council of Fountain Inn if the disputed area belonged to it anyway?

The evidence is that there was no contract though much was made by LCPW that one was discussed, that meetings were held about it, but that for some reason the parties failed to adopt it.

The proper resolution of this case is to hold that LCPW does not have all of Laurens County as its exclusive territory. The residents and businesses in this area benefit as a result because there will be a choice of more than one source for natural gas. Both utilities will be able to decide and expand service based on economic decisions. And in this case, the testimony is that the owner of Owings Industrial Park, Laurens County Development Corporation, has invited Fountain Inn to install supply lines on site and to submit proposals to customers to provide natural gas.

As stated previously, the simple resolution of the matter is that either LCPW or Fountain Inn may provide natural gas service to a customer outside their respective city limits by contract. The customer is in charge. Any customer may choose which utility it wants as its natural gas provider. The "service area," that is, each customer with which there is a contract, is protected so long as the contract is in existence. LCPW and Fountain Inn must each determine if the cost to provide the service is beneficial to its constituents.

IV. CONCLUSION

For the reasons stated herein the City of Fountain Inn respectfully requests that the Court dismiss the Complaint.

Respectfully submitted,

HOLMES LAW FIRM

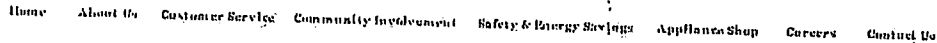
April 14, 2014
Greenville, South Carolina

By: _____
David W. Holmes
Attorney for Defendant
SC Bar #2577

HOLMES LAW FIRM
712 N. Main Street
Greenville, SC 29609
Tel: 864-271-2381
Fax: 864-271-7994

TAB 1

TAB 2



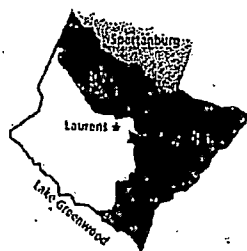
CNNGL is committed to the safety of the public and protection of the environment. We are passionate about providing natural gas in a safe, efficient, and environmentally responsible manner. We are dedicated to maintaining uninterrupted service to our customers who depend on natural gas to fuel their homes and businesses.

Service Areas:

CNGCA is proud of its reputation of providing safe, reliable and competitively priced natural gas services to residential, commercial and industrial customers. We provide clean, efficient, environmentally friendly natural gas for heating homes and businesses, cooking, water heating, gas fireplaces, and many other uses to about 13,000 customers.

Locations/Offices





Office hours are Monday through Friday, 8 a.m. to 4:30 p.m. Telephones are answered until 5 p.m. For customer convenience, a drive-thru window and after-hours night deposit box are available at both locations.

CNNGA closes its offices in observance of the following annual holidays:

- **New Year's Day**
- **Martin Luther King Day**
- **Easter** Offices are closed Good Friday
- **Memorial Day**
- **Independence Day** July 4
- **Labor Day**
- **Thanksgiving** Offices are closed Thanksgiving Day and the Friday following
- **Christmas** Offices are closed Christmas Day and the day following

If a holiday falls on a Saturday, CNNQA will close its offices on the Friday prior. If a holiday falls on a Sunday, CNNQA will close its offices on the Monday following.

CNN/CA Clinton Office
1013 Springdale Drive
PO Box 511
Clinton, SC 29325-0511
Phone - 864.833.1862
Toll Free 800.221.8108
Fax 864.833.0598
Get Map

CNNGA Newberry Office
888 Wilson Road
PO Box 767
Newberry, SC 29108
Phone - 803.276.1550
Toll Free 800.221.8109
Fax 803.276.9066
Get Map

For after-hour emergencies, call:

Laurens/Spartanburg Counties - 864.833.7512
Newberry County - 803.321.2222 or 803.276.2222

TAB 3

1 about to install a new feeder line, a 10-inch
2 natural gas line, that would run from our tap with
3 Transco, which is up north of Fountain Inn, and
4 run all the way to the City of Laurens.

5 Q. Do you know who initiated that meeting in 1985?

6 A. As I remember, we did. The CPW in Laurens.

7 Q. Do you remember who attended that meeting?

8 A. I know that Mayor Gault was there. There was a
9 Mr. Moore, I believe, that worked at the City of
10 Fountain Inn. I know that some of our consultants
11 that were working in the natural gas area here
12 designing the 10-inch line were in that meeting,
13 and it seems like Mr. Clyde Taylor, who was in
14 charge of the gas system here, was in that
15 meeting.

16 Q. This would've been just about the time you were
17 made the General Manager.

18 A. Just before that, as I remember, sir.

19 Q. Just before that?

20 A. I'm thinking it was in early 1985.

21 Q. What was the result of those conversations?

22 A. We had approached Fountain Inn showing them where
23 we intended to install this 10-inch line. We were
24 attempting to get an answer from them as to how
25 far down this particular road they intended to

TAB 4

1 have their service area, because we did not want
2 to compete with them with this particular line.
3 This line was necessary to give us a second feeder
4 from Transco and we wanted to know how far down
5 that route they intended to serve before we began
6 hooking customers to that line. There was a
7 discussion of a road that was known as Tall Pines
8 Road. I don't remember the secondary number
9 designation of that road. That was where they
10 initially said we have no intention of coming
11 further south than this road.

12 Q. Were there any agreements drafted, letters sent
13 back and forth, or anything like that?

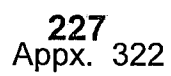
14 A. If there were I don't remember.

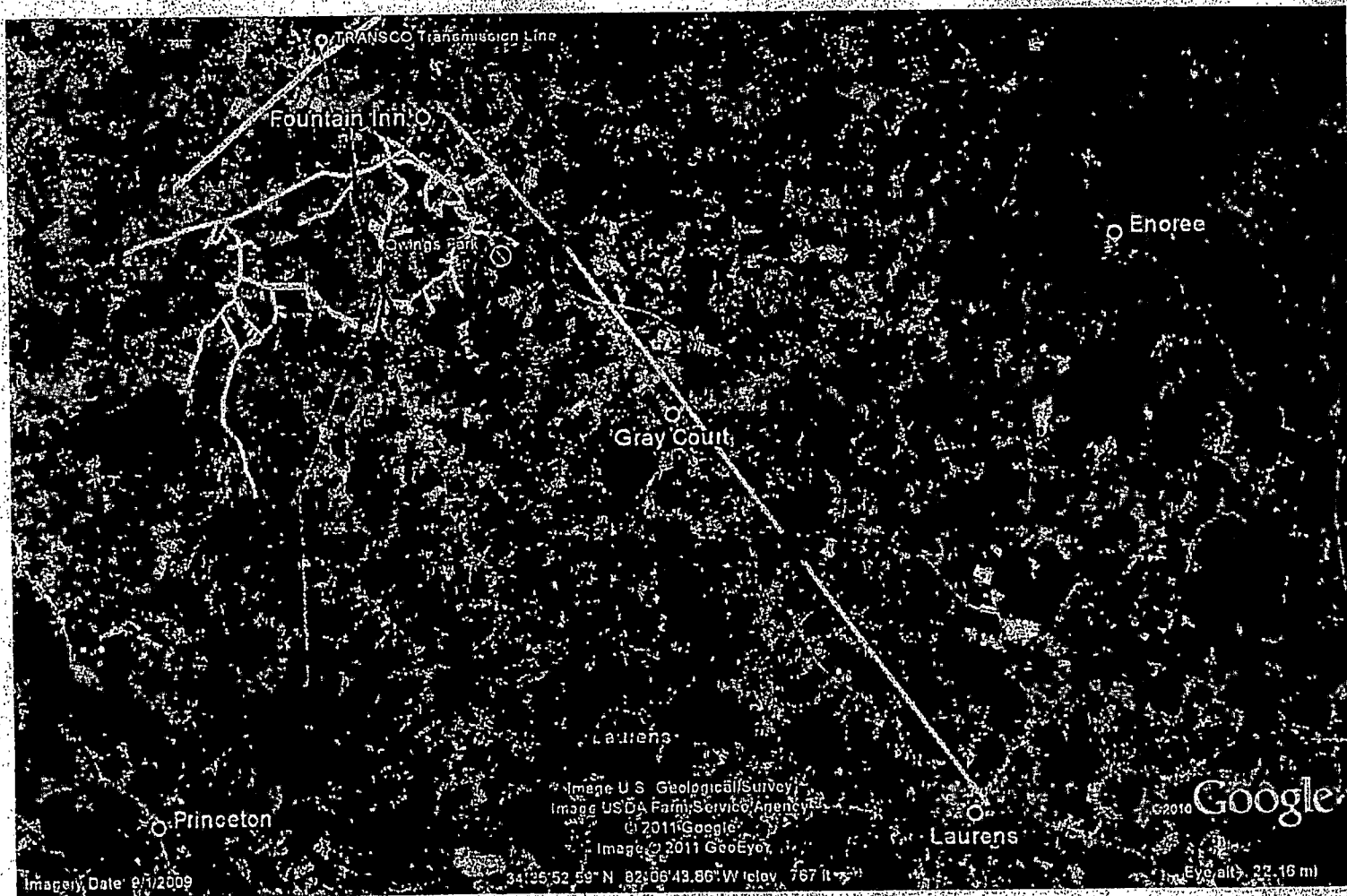
15 Q. So what did you understand was the result of that
16 meeting?

17 A. Well, as I understood it the result of that
18 particular meeting was that the division line was
19 going to be Tall Pines Road where it intersected
20 with - I think that's Fairview Road that goes out
21 of Greenpond toward Fountain Inn. At some point
22 there was a call from Fountain Inn saying that
23 they believed that what we had discussed was the
24 county line was going to be the division. There
25 was a conversation held about, you know, did they

Tara Scott and Associates
864-992-9544

TAB 5





Imagery Date: 8/1/2009

34°25'52.59" N 82°06'43.86" W elev. 767 ft

Eye alt: 22.16 mi

Image U.S. Geological Survey
Image USDA Farm Service Agency
© 2011 Google
Image © 2011 GeoEye

© 2010 Google

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

LYNN W. LANCASTER

IN THE CIRCUIT COURT
2014 OCT 10 A 10:38

Commissioners of Public Works of the City of
Laurens, South Carolina, also Known as the
Laurens Commission of Public Works,

C.A. No.: 2011-CP-30-309

LAURENS COUNTY
CLERK OF COURT

Plaintiff,

v.

City of Fountain Inn, South Carolina.

Defendant.

DEFENDANT CITY OF FOUNTAIN INN'S MOTION TO AMEND

Pursuant to Rules 52 and 59, SCRPC, Defendant City of Fountain Inn (the "City") hereby moves to alter or amend this Court's order filed September 26, 2014. The City received written notice of the entry of the order on September 29, 2014.

As an initial matter, the order does not "find the facts specially and state separately its conclusions thereon," as required by Rule 52, SCRPC. The City further expresses concerns (as previously expressed to the Court) that the Court did not make its ruling known to all parties prior to soliciting and signing a proposed order from Plaintiff Commissioners of Public Works of the City of Laurens, South Carolina, also known as the Laurens Commission of Public Works ("LCPW"). The City was not given the benefit of knowing the Court's instructions in soliciting the proposed order, and, as a result, the City was unable to provide comment as to whether the proposed order, which the Court signed without change even after being made aware of the City's concerns, was consistent with the Court's instructions.

The City hereby incorporates its pre- and post-trial memoranda as to why it was entitled to judgment in this case. With respect to the specific language of the order, the City raises the following points:

1. There was no agreement between the City and LCPW setting a boundary. At best there was an agreement to agree, which does not a contract make. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, --- S.C. ---, 762 S.E.2d 696 (S.C. 2014). In addition, any such contract would have been *ultra vires* in as much as it would have bound future councils of the City with respect to a governmental function and improperly delegated the authority of the City's council. *City of Beaufort v. Beaufort-Jasper County Water & Sewer Auth.*, 325 S.C. 174, 480 S.E.2d 728 (1997). LCPW abandoned its contract claim at trial. However, the order suggests that there was a boundary agreement between the parties. The testimony showed that there was no agreement, and the fact that both the City and LCPW had customers on the other side of the "line" further reflects that there was no such boundary. Moreover, LCPW does not have contracts with all customers on its side of the "line," as both the City and Clinton-Newberry Natural Gas Authority provide service in that portion of Laurens County. All three of these providers sought to serve the new ZF facility. For these reasons, the evidence does not support the rulings in the order.

2. Municipalities do not have the power to divide territory outside their corporate boundaries. They may enter contracts subject to S.C. Code Ann. § 5-7-60, but otherwise, the powers of a city are limited to the area within the city's limits. *See* S.C. Code Ann. § 5-7-30; *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."). Quite simply, the general powers of the City of Laurens (and thus the LCPW) and the City stop at their city limits. As a practical matter, this makes sense because the residents of a city have the ability to vote to change the way city functions are managed. Non-residents do not have that ability, and therefore should retain the ability to contract with whomever they choose.

3. Neither the City nor LCPW is the governing body over the disputed unincorporated area, and therefore the "designated service area" language of S.C. Code Ann. § 5-7-60 is inapplicable.

4. LCPW has not budgeted funds for the purpose of providing service in the area. Instead, it has budgeted funds to maintain a safe and consistent supply of gas to the City of Laurens, and that transmission line coincidentally crosses northern Laurens County by virtue of the location of the TRANSCO line. Again, the evidence does not support this ruling in the order.

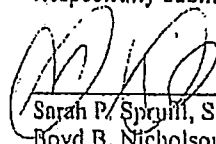
CONCLUSION

For all of these above reasons and those presented by the City at the trial and in its briefings in this matter, the Court should reconsider its earlier rulings and amend its order.

Based on these arguments, the City contends it is entitled to have judgment entered in its favor.

At the very least, however, the order should be amended to reflect the issues and evidence in this case as discussed above.

Respectfully submitted,



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

David W. Holmes, SC Bar No. 2577
HOLMES LAW FIRM
712 North Main Street
Greenville, SC 29609
Telephone: 864.271.2381
Facsimile: 864.271.7994

Attorneys for Defendant
City of Fountain Inn, South Carolina

October 8, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Commissioners of Public Works of the
City of Laurens, South Carolina, also
Known as the Laurens Commission of
Public Works,

Plaintiff,

vs.

City of Fountain Inn, South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS.

CIVIL ACTION NO: 2011-CP-30-309

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO ALTER OR AMEND THE
ORDER OF THE COURT**

Plaintiff opposes Defendant's Motion to Alter or Amend the Order granting judgment in favor of the Plaintiff. The Order entered by the Court is proper in both form and substance and correctly sets forth the Court's conclusion that under S.C. Code Ann. § 5-7-60, Plaintiff, the Laurens Commission of Public Works ("LCPW"), has established a designated service area for the service of natural gas such that Defendant may not serve natural gas in that area without permission from the LCPW.

Defendant argues that the Court did not find the facts specially and did not state separately its conclusions thereon. Plaintiff disagrees, and Defendant does not identify what exactly is missing from the Order. The Order has a fact section stating the Court's findings of fact based upon the testimony and the evidence presented at trial. The Order also sets forth the Court's conclusions of law thereon.

Defendant's concern that it was not advised of the Court's instructions for preparing the Order is baseless. The proposed order was sent to Defendant's counsel at the same time and in the same manner as it was sent to the Court on June 30, 2014. Defendant's counsel immediately acknowledged receipt of the proposed order. Defendant made no comments on the substance of the proposed order in the almost 90 days between the date it was initially sent to the Court as well as to Defendant's counsel and the date the Order was signed. It is appropriate for the Defendant to take issue with the

portions of the Order with which the Defendant disagrees, but taking issue with the preparation and signing of the Order, in this case, is not. The only issue in the case is whether Plaintiff met the requirements of Section 5-7-60 for establishing a "designated service area" for the service of natural gas. Nothing occurred that compromised Defendant's opportunity to comment on the proposed order or to argue, as it is now doing, that the Order should read differently.

Defendant argues that there was not an agreement setting a boundary for service between the LCPW and the City of Fountain Inn. Plaintiff would respectfully show that the Order addresses that issue correctly. The Order finds, based upon the undisputed testimony of LCPW's witnesses and Carey Elliott, the former system manager for the natural gas system for the City of Fountain Inn, that the boundary line was drawn on a map by officials of both parties. However, the Order expressly states that the boundary line was not formally ratified. As acknowledged in Defendant's motion, the Order states that Plaintiff abandoned its claim for breach of contract.

No agreement is necessary to establish a designated service area under Section 5-7-60. In fact, the statute assumes that no agreement exists – otherwise there would be no reason for the statute. The Order's discussion of the boundary line is simply to show that the parties had observed the boundary line and had cooperated regarding customers close to it. The testimony on that point was not only undisputed, it was testified to by Carey Elliott, who as noted above, had been the system manager for the natural gas system for City of Fountain Inn when the designated service area was established. There was no testimony that Clinton-Newberry serves customers in the disputed area, and it was clearly established at trial that the City of Fountain Inn had not attempted to serve customers in this area without the LCPW's consent until the City of Fountain tried to compete to serve ZF Transmissions, a new industrial customer in the area.

Defendant argues that municipalities do not have the power to divide territory outside their corporate boundaries. That may be true generally, but municipalities do have the ability to establish

designated service areas for particular services outside their corporate boundaries under Section 5-7-60. Even the case Defendant cites to support its argument; *Child v. City of Columbia*, 87 S.C. 566, 70 S.E.2d 296 (1911), states that that municipal corporations may only act within their territorial boundaries, "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." The language of Section 5-7-60 is completely clear that municipalities may establish designated service areas, and none of the cases decided under that statute have reached a conclusion remotely inconsistent with the Order issued in this case.

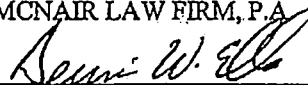
Defendant argues that neither the City of Fountain Inn nor the LCPW is the governing body over the disputed territory, therefore the "designated service area" language of S.C. Code Ann. § 5-7-60 is inapplicable. That argument is directly inconsistent with the language of the statute which expressly states that "designated service area shall mean an area in which the particular service is being provided or is budgeted or funds have been applied for as certified by the governing body thereof." The case law makes clear, as does the language of the statute, that a municipality or political subdivision's providing the service alone creates a "designated service area." *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984). Furthermore, the "governing body" referred to in the statute that needs to certify that a municipality or political subdivision has applied for funds to serve an area is clearly the governing body *of that municipality or political subdivision*, which in this case, is the LCPW. Also, because in this case the service has been actually provided, that issue does not bear on the outcome of this case in any event. Further, the statute clearly provides that permission for a municipality to serve in the designated service area of another municipality must be "approved by the governing body *of the other municipality or political subdivision concerned*." (Emphasis added). Defendant's argument is simply mistaken.

Finally, Defendant argues that LCPW has not budgeted funds for the purpose of providing service in the disputed area, but rather to serve the citizens within the City of Laurens, and that the transmission line only coincidentally crosses northern Laurens County. That argument is completely without merit. First, the LCPW is entitled to testify as to the components of its budget. The LCPW provides natural gas service in an area outside the corporate limits of the municipality it serves and must have the necessary staff and facilities to do so. The LCPW must budget for the costs of the providing that service and the revenues anticipated to be received from it. It is difficult to imagine that the City of Fountain does not budget for providing services outside its corporate limits as well. Furthermore, even if Defendant's argument were correct, that would not change the outcome of the case. Budgeting is an additional means of establishing a designated service area under Section 5-7-60. Plaintiff is actually providing natural gas service in the disputed area, and therefore, that area is Plaintiff's designated service area for natural gas service.

WHEREFORE, Plaintiff prays that Defendant's motion be denied.

Respectfully submitted

MCNAIR LAW FIRM, P.A.


Bernie W. Ellis
SC Bar No. 64841
Post Office Box 447
Greenville, South Carolina 29602
Tel. (864) 271-4940
Fax (864) 271-4015
Attorney for Plaintiff

Greenville, South Carolina
October 22, 2014

1 State of South Carolina Court of Common Pleas
2 County of Laurens Transcript of Record
3 2011-CP-30-00309

4 Commissioners of Public Works)
5 of the City of Laurens, South)
6 Carolina, a/k/a the Laurens)
Commission of Public Works,)

7 Plaintiff,)

8 vs.)

9 The City of Fountain Inn,)
10 South Carolina,)

11 Defendant.)

12 March 20, 2014
13 Laurens, South Carolina

14 B E F O R E:

15 The Honorable Cordell J. Maddox, Jr., Judge
16

17 A P P E A R A N C E S:

18 Bernie W. Ellis, Esquire
19 Hunter S. Freeman, Esquire
Attorneys for Plaintiff

20 David W. Holmes, Esquire
21 Attorney for Defendant
22

23 Stacy S. Johnson, RPR
24 Circuit Court Reporter
25

I N D E X

WITNESS	PAGE
Coleman F. Smoak, Jr.	
Direct Examination by Mr. Ellis	18
Cross-Examination by Mr. Holmes	27
Redirect Examination by Mr. Ellis	33
Carey Ellison Ellis	
Direct Examination by Mr. Ellis	34
Cross-Examination by Mr. Holmes	38
Redirect Examination by Mr. Ellis	39
Irvin Dale Satterfield	
Direct Examination by Mr. Ellis	40
Cross-Examination by Mr. Holmes	54
Redirect Examination by Mr. Ellis	67
Eric Scott Heath	
Direct Examination by Mr. Ellis	68
Cross-Examination by Mr. Holmes	79
Redirect Examination by Mr. Ellis	85
John Young	
Direct Examination by Mr. Ellis	85
Michael Pitman	
Direct Examination by Mr. Holmes	90
Cross-Examination by Mr. Ellis	100
Redirect Examination by Mr. Holmes	103
Irvin Dale Satterfield	
Rebuttal Examination by Mr. Ellis	104
Surrebuttal Examination by Mr. Holmes	105
Certificate Of Reporter	113

<u>E X H I B I T S</u>				
	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	P - 1	11/11/92 Letter	4	20
4	P - 1A	Map	21	21
5	P - 2	Letter	4	22
6	P - 3	7/22/94 Letter	4	23
7	P - 4	8/15/94 Letter	4	23
8	P - 5	Map	4	44
9	P - 6	Map	4	54
10	P - 7	Contract	4	54
11	P - 8	Resolution	4	87
12	P - 9	Map	77	77
13	D - 1	11/93 Letter	4	28
14	D - 2	Map (3/30/11 Letter)	4 (65)	30
15	D - 3	Map	93	93
16	D - 4	3/30/11 Letter (Map)	65	(65) 93
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (Plaintiff's Exhibit Numbers 1 through 8 were marked
2 for identification.)

3 (Defendant's Exhibit Numbers 1 and 2 were marked for
4 identification.)

5 BAILIFF: All rise. Court come to order.

6 THE COURT: Thank you all. Have a seat. I apologize
7 for making you wait. I'm still a little stunned from the
8 case yesterday. I had bad dreams about it.

9 Okay. Just for the record, we've had a discussion in
10 the back briefly about the issues in this case and it's my
11 understanding that there have been some cross filings for
12 summary judgment that have been denied and that this case
13 -- there are very good lawyers here and I -- again, after
14 yesterday I appreciate that more than you will ever know.

15 We had yesterday a pro se plaintiff that called as one
16 of his witnesses God, so it can't go downhill any worse
17 than that. But we have talked about it, they've given me
18 an overview of it, and I have memorandums and briefs,
19 et cetera. In a nonjury case like this where my main job
20 is gonna be to interpret a statute, I am perfectly willing
21 to let you put anything you want on the record, point out
22 anything that's important, call any witnesses you want, but
23 knowing you two attorneys, I know that y'all have briefed
24 it well, so I don't have any problem with letting you call
25 whoever you want to call setting forth the parameters of

1 the case and then letting me take the file with me and
2 any memorandums and then reviewing that before I make a
3 decision.

4 Quite frankly, in a case like this that involves an
5 interpretation of the statute, I would probably take it
6 under advisement anyway just because there's too much
7 information packed in here for me to come up with a
8 decision off the cuff., But having said that, I'll be happy
9 to hear anything you want and I trust all of you and we'll
10 go from there.

11 Yes, sir. Do you want to tell me a little bit about
12 it?

13 MR. ELLIS: Yes. Thank you, Your Honor. May it
14 please the Court? For the record, my name is Bernie Ellis.
15 I'm with the McNair law firm and I represent the Laurens
16 Commission of Public Works in this matter. As Your Honor
17 alluded to, we are here on a technical declaratory judgment
18 action. We need for the Court to determine for us what the
19 rights of the parties are under the statutes.

20 Just to give you a little background as to what this
21 dispute is about, in 1992 representatives from the Laurens
22 Commission of Public Works and representatives from the
23 City of Fountain Inn decided to draw a boundary line as to
24 where each of those entities was going to serve natural gas
25 outside of their corporate limits.

1 THE COURT: Right.

2 MR. ELLIS: Obviously it's never a dispute within
3 their city limits, but when you start going outside the
4 corporate limits it was felt that it was a good idea for a
5 boundary to be drawn. The LCPW was going to serve and has
6 been serving the southern side of this line that you see on
7 this map and the City of Fountain Inn would be serving on
8 the northern and westerly side of the map.

9 THE COURT: Okay.

10 MR. ELLIS: And so this was put -- and we can put this
11 into evidence -- this was put in the form of a letter that
12 was sent by the LCPW to the City of Fountain Inn and the
13 City of Fountain Inn's representative, Mr. Elliott, who's
14 here today, responded and said yes, that's -- that's what
15 we talked about.

16 THE COURT: That was the line that we discussed back
17 there?

18 MR. ELLIS: Yes, sir.

19 THE COURT: Okay.

20 MR. ELLIS: This agreement was in the form of a letter
21 agreement. It was not formally ratified by the City of
22 Fountain Inn City Council and a formal resolution was not
23 adopted with the LCPW, so it was not -- it was not a --
24 something that was formally done, but the boundary line was
25 observed by the parties from 1992 up until 2011. They

1 generally observed the -- the line and when there was any
2 kind of an issue about it, we think you're crossing over
3 into our territory, they would discuss it and work it out,
4 so there really was not a conflict.

5 In 2011, the City of Fountain Inn decided that it
6 wanted to begin providing services on the Laurens
7 Commission of Public Works' side of the line. A company
8 came in called ZF, of ZF Transmissions, and the City of
9 Fountain Inn put in a bid to provide natural gas services
10 on this side of the line. The LCPW -- Laurens Commission
11 of Public Works, the LCPW as I call them, objected. We
12 stated forcefully we didn't think that the City of Fountain
13 Inn had a right to make a bid on this because it was on the
14 LCPW side of the line, and essentially what we filed was a
15 declaratory judgment action coming to the court saying this
16 is something that's got to be resolved because we need to
17 know if we have a particular area that we're allowed to
18 serve to the exclusion of the City of Fountain Inn or if it
19 is, as the City of Fountain Inn came to believe at around
20 2011, it's just completely open competition and the City of
21 Fountain Inn can go after any potential customers anywhere
22 it would like to.

23 What we're gonna ask the Court to make a decision on
24 is the statute, South Carolina Code Annotated 5-7-60, which
25 -- and there's case law I'll provide to the court, in which

1. it says the Home Rule Act of 1975 completely revoked the
2. powers of municipalities in the state.

3. South Carolina Code Annotated 5-7-60 contains
4. provisions both granting and limiting the exercise of the
5. corporate functions of the municipalities outside their
6. corporate limits. And what 5-7-60 actually provides, in
7. pertinent part, is that a municipality may perform any of
8. its functions, furnish any of its services in areas outside
9. the corporate limits of such municipality by contract, and
10. this is just the pertinent parts, except within the
11. designated service area for all such services of another
12. municipality or political subdivision. For purposes of
13. this section, designated service area shall mean an area
14. in which the particular service is being provided or as
15. budgeted or funds have been applied for as certified by the
16. governing body thereof. Provided, however, the limitation
17. as to service areas of other municipalities or political
18. subdivisions shall not apply when permission for such
19. municipal operations is approved by the governing body of
20. the other municipality or political subdivision concerned.

21. So what -- what we are going to present to the Court
22. is evidence and argument that what that statute means is
23. that a municipality is empowered by 5-7-60 to go outside
24. its corporate limits. I think that without that statute a
25. city couldn't go outside of its corporate limits. It's

1. empowered to go out there, but it's not empowered to go
2. where that service is already being provided by another
3. municipality. That's what we think the statute is.

4. And, Your Honor, we will present to you case law by
5. the form of a brief that -- that basically explains, we
6. think, that is the way the courts have come down on it and
7. so we're going to present our case, present our evidence,
8. just to show that this is, indeed, an area that we have
9. actively served, we're still serving it today and we will
10. -- we will try to persuade the Court that that is our
11. designated service area that Fountain Inn can't cross into
12. for natural gas services.

13. THE COURT: Okay. Do you agree with that?

14. MR. HOLMES: I don't think so, Judge --

15. THE COURT: Okay.

16. MR. HOLMES: -- but I think you would have expected
17. that.

18. THE COURT: Well, that's why we're here.

19. MR. HOLMES: That's exactly right.

20. Your Honor, I'm David Holmes, and I represent the City
21. of Fountain Inn. And what I will say that I do agree with
22. is I think this case boils down into an interpretation of
23. Section 5-7-60. It is a part of the Home Rule Act. The
24. City of Fountain Inn doesn't deny that in the early
25. nineties there was some discussion about there perhaps

1 being a boundary, but there is no contract.

2 The -- the complaint in this case alleges that there
3 was a written contract that was entered into by and between
4 the parties. I think we've now heard that that is not the
5 case, that neither public entity ever adopted any kind of
6 an agreement with regard to a boundary. And, Judge, I
7 think you know that even if they had in 1992, the length of
8 that contract and even any kind of informal thing, couldn't
9 exceed the terms of the elected officials of either body.
10 We think of the Joey Preston case that I think the Court's
11 probably very familiar with and there's another case that
12 has set some -- some law in that regard, but nonetheless
13 we're talking about two people who were talking about what
14 was going on in northern Laurens County in the early
15 nineties.

16 And the reason that's important is because I think
17 most of us who were around this area and know something
18 about Laurens that in the northern part of Laurens County
19 outside the city limits of Fountain Inn is basically farm
20 country. There hasn't been anything going on in the
21 northern part of Laurens County that is any kind of major
22 development with regard to money, anything other than farms
23 and residences that kind of thing, until in the mid 2000's
24 Laurens Development Corporation began to develop a piece of
25 property that's now known as the Owings Industrial Park.

1 None of us could have possibly imagined in the
2 eighties or 1990's that the State of South Carolina would
3 have a company such as BMW and what that might spawn. If
4 you had told me back then that the State of South Carolina
5 would be known for aviation and automotive, I would have
6 thought you were crazy because at the time I was working in
7 the textile industry and we thought that was what South
8 Carolina was all about, but the Owings Industrial Park
9 recently has apparently become a hot discussion because
10 there are major industrial users that are planning to go in
11 there. There are two that are in there now and everyone in
12 Laurens County certainly hopes that before too much longer
13 there will be other development because that's good for
14 everyone.

15 The position the City of Fountain Inn takes, frankly,
16 with regard to this statute is you're talking about two
17 municipal entities both of which are offering services
18 outside their corporate limits and in 5-7-60 we believe
19 what you're going to find is that in order for there to be
20 a designated service area can't be what Laurens CPW has
21 done in this case.

22 In 2011, CPW, sitting in the corporate limits of the
23 city of Laurens, adopted a resolution saying this is our
24 service area. We're saying that the City of Fountain Inn
25 could not sit in the corporate limits of Fountain Inn and

1 declare the entire northern half of Laurens County as its
2 service area because it has no legislative authority of
3 any kind. In fact, it has no legal authority other than it
4 can provide a service by contract outside its territorial
5 boundaries.

6 So we believe that when you look at 5-7-60 you're
7 going to find that it has to be approved by the -- by the
8 governing body -- it's a designated service area certified
9 by the governing body thereof, and that's the issue. What
10 governing body is there in the unincorporated areas of
11 Laurens County? It certainly isn't LCPW and it certainly
12 isn't the City of Fountain Inn. If it's anybody, it would
13 be Laurens County, but Laurens County can't provide natural
14 gas services, so we're not -- that's not the issue. We
15 have two basic utilities that are inside northern Laurens
16 County that have the ability to provide natural gas, but
17 it's not just these two. Clinton Newberry Natural Gas
18 Authority also have lines in this area and they also
19 submitted a bid to provide natural gas to the Owings
20 Industrial Park. They're not a part of this lawsuit and
21 they're not sued and they're a natural gas authority set up
22 by different legislation and this lawsuit also doesn't
23 involve private utilities that might be regulated by a
24 public service corporation such as Piedmont Natural Gas
25 that Fountain Inn has to deal with in Greenville County,

1 and there's nothing to stop any of these utilities from
2 coming into the unincorporated area of Laurens County and
3 providing service.

4 So we believe, Your Honor, when you read the statute
5 and you look at these cases, which I'll be glad to argue
6 with you at the appropriate time, these cases do not say
7 what CPW says it says and, frankly, the cases are between a
8 county and a city or a special purpose district and a city,
9 they're never between two cities, and that's very important
10 when you get to looking at the statute.

11 **THE COURT:** Well, back when the line was drawn and
12 back at some point previous to today, was there any
13 discussion between Laurens Authority and Fountain Inn?
14 In other words, has there ever been any negotiations,
15 discussions, about the lines or about service or has -- or
16 has this issue come up and now they're arguing? Do you
17 understand what I'm asking?

18 **MR. HOLMES:** We have -- I think both of us, both
19 sides, have submitted and there are briefs and there are
20 plenty of affidavits, there is a stream of correspondence
21 that begins in 1992 that invites both parties to -- that
22 CPW invites parties to a meeting to sit down and discuss a
23 -- what they call a territorial boundary. That led to some
24 things, including the City of Fountain Inn sending back a
25 letter saying well, that looks like what we agreed to.

1 What there was though, Judge, is in addition to that there
2 was another letter that came out and says well, I -- by
3 CPW, we'll prepare a resolution and we'll get it submitted
4 it to both parties and get it formalized. That clearly
5 never happened and what our position is, and if there's
6 testimony about it you'll see, is, frankly, when this line
7 was drawn CPW was already providing service on the Fountain
8 Inn side, service which they have never agreed to give up
9 and provide to the City of Fountain Inn, and subsequently
10 to that there's some correspondence where the lines were
11 violated and both sides wrote the other and said what the
12 heck are you doing? Oh, this was just a mistake. But
13 there's no question about that CPW sits on the Fountain Inn
14 side of that line and has been -- been doing it for a good
15 long while.

16 So our position is we don't dispute that there was
17 discussion about the line. What our claim is, is that line
18 has certainly not been in viola -- it certainly wasn't at
19 the time it was put in place and there were some big issues
20 remaining to be resolved. What we're saying, Judge, is
21 that the City of Fountain Inn in 1990 and 1992 when it had
22 maybe 800 customers is certainly different now and we think
23 that the CPW -- back when they were building these lines,
24 you had Laurens Glass down here in Laurens that was using a
25 lot of that natural gas. They're not here, but what drives

1 all of this is there is a huge natural gas line. We call
2 it Cotransco. It has a 100-foot right-of-way, something
3 like that, or a 200-foot right-of-way, that goes through
4 part of Fountain Inn and even Simpsonville. It runs from
5 Texas and it goes all the way to New England. And the
6 reason that pipeline is here at all is because Clinton
7 Newberry Natural Gas Authority filed a lawsuit back in the
8 seventies, I think it was, saying they -- they're not gonna
9 provide any natural gas to the Piedmont region of South
10 Carolina. That got resolved and as a result of that the
11 two natural gas authorities, one in Clinton and one in
12 Newberry, were combined by legislation and made Clinton
13 Newberry Natural Gas Authority and now the Upstate of South
14 Carolina, both CPW, Fountain Inn and Clinton Newberry
15 Natural Gas, and for all I know Piedmont Natural Gas, all
16 get their natural gas from this enormous pipeline that runs
17 from Texas to New England.

18 MR. ELLIS: Judge, if I may respond to that just
19 briefly.

20 THE COURT: Sure.

21 MR. ELLIS: First of all, if LCPW -- we don't agree --
22 we won't agree with the characterization that LCPW is way
23 over the line in many instances. I think there's some
24 areas where exactly where the line is that's -- that is
25 acting more as a buffer zone in the general area. We

1 haven't had that many situations also. When we have, the
2 way you're supposed to resolve it is if you think we're
3 over the line, let us know. If we think you're over the
4 line, we'll let you know, and as you'll see in the early
5 nineties that is the way that it happened.

6 Your Honor, I think the way we -- where we have our
7 most fundamental disagreement about this is this is a
8 statute that was passed to tell cities what they can do
9 outside their city limits and where they can and can't go.
10 As between municipalities, it does appear to be a situation
11 where you want to avoid a duplication of services, and
12 I'll give you a good example. This doesn't just apply to
13 natural gas. It applies as well to fire services.

14 **THE COURT:** Right.

15 **MR. ELLIS:** You don't want a situation where people
16 on the same street are getting their fire service from
17 different municipalities. You really want a situation
18 where one person is providing all of this and we think
19 that's what the statute does, but I think that more than
20 anything else as we get into this is that the statute sets
21 forth a regime that governs cities when they are providing
22 services outside of their corporate limits and I think that
23 the statute is relatively clear that it is the provision
24 of services that actually makes it the designated service
25 areas, and one of the things we will show you with our

1 exhibits is where our lines are. That the City of Laurens
2 made a substantial investment early on including lines in
3 this territory that so we can serve all of this area, and
4 we have served all of the area, and I think that that's
5 part of what the statute does as well. It's not just for
6 the duplication of services, but it's also incentivizing
7 cities to go outside their corporate limits. If you will
8 serve that area, we'll let you serve them. We'll let you
9 be the party that let's -- that gets you to keep it, so
10 that's what we're going to argue that the statute
11 indicates.

12 THE COURT: All right. And this industry is not
13 within the bounds of the city of Fountain Inn?

14 MR. ELLIS: No, sir.

15 MR. HOLMES: (Shakes head.)

16 THE COURT: It is outside in Laurens County. Okay.
17 It would sure be a lot easier if it was inside the bounds
18 of Fountain Inn, but...

19 MR. ELLIS: We'll put this in as an exhibit later, but
20 this is where the boundary line was drawn, the yellow line
21 there, and this is the industry that we're talking about,
22 ZF, that came in.

23 THE COURT: And there are certain other industries
24 that are going -- that have plans to come in there, right?

25 MR. ELLIS: Yes, sir. Well, what happened is some

1 other industries came in and the City of Fountain Inn ran
2 lines into the territory over our objection, but they did
3 run lines in there and are actually serving one or two
4 customers in our territory. And that happened since this
5 lawsuit was filed, so we have an active dispute as to
6 whether they can do that.

7 THE COURT: Okay. All right. I'll be happy to hear
8 any witnesses.

9 MR. ELLIS: Call our first witness?

10 THE COURT: Yes, sir.

11 MR. ELLIS: I'd like to call Coleman Smoak, please.

12 COLEMAN F. SMOAK, JUNIOR,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ELLIS:

16 Q. Would you state your name for the record, please?

17 A. Coleman F. Smoak, Junior.

18 Q. And, Mr. Smoak, where are you currently employed?

19 A. I'm employed by Piedmont Municipal Power Agency in
20 Greer.

21 Q. And how long have you worked there?

22 A. Since June of 2006.

23 Q. Were you ever employed by the Laurens Commission of
24 Public Works?

25 A. Yes, sir.

1 Q. For what years were you employed at the Laurens
2 Commission of Public Works?

3 A. From 1977 to 2006.

4 Q. Okay. Were you involved in attempting to establish a
5 territorial boundary between the Laurens Commission of
6 Public Works and the City of Fountain Inn for the
7 furnishing of natural gas?

8 A. Yes, sir, I was.

9 Q. And tell me how that came about.

10 A. The -- I heard you talk about the nineties, but this
11 actually goes back to the mid 1980's. In 1985, Laurens CPW
12 had determined that it needed another feeder line to come
13 from this tap that had just been mentioned a while ago, the
14 Transco line, which was installed in 1950's. In the
15 fifties, the Laurens CPW had installed a line that started
16 at the tap station north of Fountain Inn, came through the
17 city of Fountain Inn, down South Carolina Highway 14. It
18 goes along what became Interstate 385 and it follows 14 and
19 came all the way to Laurens. The -- at that time it was my
20 understanding that the division line between the Laurens
21 CPW and the City of Fountain Inn was at Exit 22 and 385.
22 Well, when we began talking about putting in the second
23 line, it was gonna come up out of Fountain Inn out of a
24 street that I believe is called Putnam Road. It was gonna
25 cross 385 somewhere near Exit 24, I believe it is, and then

1 come down Green Pond Road and make its way on into Laurens
2 County. Our concern was, you know, we're about to lay a
3 10-inch line through Fountain Inn, we need to go meet with
4 those folks and try to determine how far down Green Pond
5 Road they intend to serve in the future so we're not
6 duplicating services.

7 Q. Okay. Let me show you a letter -- let me show you a
8 letter and ask if you recognize this letter?

9 A. Yes, sir, I do.

10 Q. Okay. And what is that letter?

11 A. This is a letter to Mr. Carey Elliott of the town of
12 Fountain Inn, dated November 11, 1992, over my signature
13 that discusses a territorial boundary between the two gas
14 listings, the Commission of Public Works in Laurens and the
15 City of Fountain Inn, and it goes on to say that -- I
16 believe that it reflects our conversation and discussion
17 that was held on October 27, 1992.

18 MR. ELLIS: Okay. Your Honor, I'd like to offer that
19 into evidence as --

20 MR. HOLMES: Without objection.

21 THE COURT: All right. Without objection.

22 (Plaintiff's Exhibit Number 1, a 11/11/92 letter, was
23 admitted into evidence.)

24 BY MR. ELLIS:

25 Q. Let me show you something -- let me show you the

1 drawing that was up there just a moment ago. Let me show
2 you this map. Is the document that I've just shown you as
3 1A, is that the same outline as what you have on Exhibit 1?

4 A. Yes, sir, it is.

5 MR. ELLIS: Okay. And, Your Honor, I'd like to offer
6 1A into evidence as a clearer outline of --

7 MR. HOLMES: No objection.

8 THE COURT: Without objection.

9 (Plaintiff's Exhibit Number 1A, a map, was marked and
10 admitted into evidence.)

11 BY MR. ELLIS:

12 Q. Tell me how -- tell me the process of how that line
13 got to be drawn.

14 A. Well, at that time -- by the time we had gotten to
15 the early nineties, both of the natural gas systems, the
16 one in Laurens and the one in Fountain Inn, were involved
17 in expanding the system and putting in a lot of lines
18 outside of each of their corporate limits and there was
19 concern on both parties -- from both parties that there
20 needed to be a clearer indication of where the dividing
21 line was between the two systems, and that's what brought
22 the discussion about in October of 1992 and resulted in
23 this map.

24 Q. Did you actually meet with officials from Fountain Inn
25 to do this?

1 A. Yes, sir.

2 Q. And do you remember who was at the meeting?

3 A. I know Mr. Elliott was there, but, I'm sorry, I don't
4 remember anyone else.

5 Q. And Mr. Carey Elliott was the manager for Fountain
6 Inn?

7 A. If I -- if I remember, he was the gas system manager
8 at the time, yes, sir.

9 Q. Okay. And after you sent the letter that we marked as
10 Exhibit 1, and with the map marked as Exhibit 1A, did you
11 receive -- let me just ask if you recognize this document?

12 A. Yes, sir, I do.

13 Q. Okay. And what is that letter?

14 A. This is a letter from Mr. Elliott to me referencing
15 that same meeting on October the 27th of 1992. And he says
16 in this letter that the map that I had mailed with my
17 letter of November the 11th does -- it says, quote, does
18 reflect our previous conversations and is in agreement with
19 the Fountain Inn City Council, close quote.

20 MR. ELLIS: Okay. Your Honor, I'd like to offer this
21 exhibit into evidence as Plaintiff's Exhibit 2.

22 MR. HOLMES: No objection.

23 THE COURT: Without objection.

24 (Plaintiff's Exhibit Number 2, a letter, was admitted
25 into evidence.)

1 BY MR. ELLIS:

2 Q. Now after the map was sent, that -- in November of
3 1992, did the LCPW and the City of Fountain Inn generally
4 respect those lines?

5 A. Yes, sir, they did.

6 Q. Okay. And so, just the way this worked, I'm looking
7 -- this is a representation of 1A. So the Laurens CPW
8 then served on the south side of the line and the City of
9 Fountain Inn served on the northern side of the line,
10 right?

11 A. Yes, sir.

12 Q. All right. Let me show you a document that has been
13 premarked as Exhibit 3. Do you recognize this document?

14 A. Yes, sir, I do.

15 Q. Okay. What is this document?

16 A. This is a letter from Mr. Elliott to me dated July 22,
17 1994, in which he asks that the Laurens CPW comply with our
18 service area agreement of November the 11th, 1992.

19 Q. Okay. And let me show you this document and ask if
20 you recall this document?

21 A. Yes, sir, I do.

22 Q. And what is the document we've marked as Exhibit 4?
23 Would you describe that?

24 A. This is a copy of a letter from myself to Mr. Elliott
25 dated August the 15th, 1994, discussing and referencing his

1. letter that you just handed me as Exhibit 3, and stating,
2. from me, that I do not believe we were in violation of the
3. agreement.

4. MR. ELLIS: Your Honor, I'd like to offer exhibits 3
5. and 4 into evidence.

6. MR. HOLMES: No objection.

7. THE COURT: Without objection.

8. (Plaintiff's Exhibit Number 3, a 7/22/94 letter, and
9. Plaintiff's Exhibit Number 4, a 8/15/94 letter, were
10. admitted into evidence.)

11. BY MR. ELLIS:

12. Q. Just to recap, Mr. Elliott thought that the LCPW was
13. violating the territorial boundary and you explained to
14. him that you didn't believe the LCPW was violating the
15. territorial boundary?

16. A. That's correct, sir.

17. Q. From that time on, from 1994 until you left the LCPW
18. in 2005, did you have any other problems with the City
19. of Fountain Inn and violating each others' territorial
20. boundaries?

21. A. First of all, I left in 2006 --

22. Q. I'm sorry.

23. A. -- but, no, sir, we generally abided by the line. I
24. mean, there were some instances where, you know, we got
25. requests from certain areas, they did, too, and we talked

1 about, you know, should we serve that or are you going to
2 serve it, but generally we abided by those lines.

3 Q. Okay. So during that period of time when you were
4 there until 2006, LCPW -- I'm sorry, City of Fountain Inn
5 didn't try to lay lines within the LCPW area, right?

6 A. No, sir.

7 Q. Okay. During that period of time when you were there,
8 did the LCPW serve customers all along the boundary line?

9 A. Pretty much, yes, sir.

10 Q. So you had -- you actually did provide service within
11 -- within the disputed territory?

12 A. Yes, sir.

13 Q. Okay. I was going to put this in a little bit later,
14 but since you referred to it I want to show you these
15 documents and see if you recognize -- recognize the lines
16 -- the gas lines that are drawn on there.

17 A. Yes, sir, I do.

18 Q. Okay. Could you describe for the Court just what
19 these lines are, what this shows? There's a yellow line
20 that says the LCPW natural gas service boundary. Do you
21 see that?

22 A. Yes, sir, I do.

23 Q. Okay. And what are the other lines that are shown on
24 here, these gas lines?

25 A. There is a line that is shown along a line that is

1 marked as frontage and 385. That's in the upper center of
2 this document and it's marked as an eight-inch gas line.
3 That's the one that was installed in the 1950's in order to
4 serve Laurens.

5 Q. Okay. And that's LCPW's line?

6 A. That's correct.

7 Q. Okay.

8 A. Then over on the left side of the document basically
9 toward the bottom there's a line indicating a 10-inch gas
10 line. That was installed in 1985 and caused the first
11 discussions that I mentioned back in the mid eighties with
12 the City of Fountain Inn and that runs all the way to
13 Laurens as well. And then in the middle there's a line
14 identified as a 6-inch gas line along Stoddard Mill Road.
15 That was installed at the same time that the 10-inch line
16 was installed, so it was also installed in 1985.

17 Q. Okay. And so are these the main lines that LCPW has
18 to serve this area?

19 A. Yes, sir.

20 Q. Okay. And did it provide all the capacity that LCPW
21 needed to serve in this secured area?

22 A. Yes, sir.

23 Q. Okay. Thank you. Can you give the Court just a
24 general idea what did it cost to install these lines?

25 A. I'm sorry, sir. I don't remember. I've been out of

1 that business too long.

2 Q. Okay. Let me ask you this as far as the way these
3 lines work. These are main transmission lines and then how
4 do you -- how do you actually get the gas to the customers?

5 A. You can actually serve them all from the transmission
6 lines if you put in a regulator station to do that, but in
7 general there are smaller lines of lower pressure that are
8 put in down the various roads in order to serve customers.

9 Q. Okay. And just to be clear, while you were there
10 until 2006, the City of Fountain Inn had not run any lines
11 similar to this within the disputed area, right?

12 A. No, sir.

13 MR. ELLIS: Okay. I have no further questions for
14 you, Mr. Smoak. Thank you.

15 MR. HOLMES: May it please the Court, Your Honor?

16 CROSS-EXAMINATION

17 BY MR. HOLMES:

18 Q. Mr. Smoak, there are some more letters that formed the
19 correspondence trail to the 1992 discussions, aren't there?
20 Well, let me hand you a document and ask you if you can
21 identify that. It's a letter dated November 1992.

22 A. Yes, sir.

23 Q. You sent that letter to Carey Elliott saying that you
24 were going to get a resolution prepared for adoption by
25 both LCPW and the City of Fountain Inn; isn't that right?

1 A. Yes, sir.

2 Q. That never happened?

3 A. No, sir, it did not.

4 Q. All right. You've looked at all the minutes for LCPW
5 and you know that never happened?

6 A. That's correct.

7 MR. HOLMES: Your Honor, we'd move this document into
8 evidence.

9 THE COURT: Any objection?

10 MR. ELLIS: No objection.

11 THE COURT: Without objection.

12 (Defendant's Exhibit Number 1, a 11/92 letter, was
13 admitted into evidence.)

14 BY MR. HOLMES:

15 Q. And, Mr. Smoak, you also know because you put into
16 evidence Plaintiff's Exhibit Number 4, letter dated
17 August 15, 1994, in which you us raised that there were
18 other discussions about a boundary that are not shown on
19 this line that you put on these maps; isn't that right?

20 A. Yes, sir.

21 Q. All right. That there's other discussions about
22 serving people in other parts of the county; isn't that
23 right?

24 A. On one particular road, yes, sir.

25 Q. All right. And isn't it true that at the time the

1 line was drawn that LCPW was actually serving customers
2 like Dispozoz right up near the city limits of Fountain Inn?
3 A. We began servicing Dispozoz, if I'm not mistaken, sir,
4 in late 1986.

5 Q. But my point is the line that's on this map is a line
6 that you drew to get Fountain Inn to agree to, but you were
7 providing beyond this line, on the northern side of this
8 line, a customer at the time it was drawn?

9 A. Yes, sir.

10 Q. So that line wasn't the boundary because you were
11 already crossing it at the time you were discussing it?

12 A. During our discussions we -- we never mentioned
13 existing customers and whether they would be traded or any
14 other disposition of them.

15 Q. All right. So your interpretation of a line is well,
16 we'll draw one, but if I have customers on your side I get
17 to keep them; is that right?

18 A. And I -- and I believe that was the understanding of
19 Fountain Inn, too, if they had anybody on the other side.

20 Q. Okay. And Dispozoz is a pretty large industrial
21 customer that uses a lot of gas, right?

22 A. Yes, sir.

23 Q. So that's very significant. It was very significant
24 to Laurens CPW, wasn't it?

25 A. A very significant customer, yes, sir.

1 Q. All right. Now you've testified about some lines that
2 were built and I'm gonna show you a little bit larger map
3 that was marked as Defendant's Exhibit Number 2 at a prior
4 hearing.

5 MR. HOLMES: And, Madam Court Reporter, can we just
6 let this be Number 2 for this one?

7 THE COURT REPORTER: Sure.

8 MR. HOLMES: Okay. So we'll say that that is Exhibit
9 Number 2, hopefully without objection.

10 MR. ELLIS: Let me come around and see it.

11 (Defendant's Exhibit Number 2, a blown-up map, was
12 admitted into evidence.)

13 BY MR. HOLMES:

14 Q. And this is a little bit larger map, but this -- this
15 shows the Transco line; does it not?

16 A. Yes, sir, it does.

17 Q. All right. And it -- the only place that CPW gets its
18 natural gas from is the Transco huge natural gas line
19 that's up in the City of Fountain Inn?

20 A. Yes, sir.

21 Q. All right. So in order for the city of Laurens to
22 have natural gas, CPW had to have a line from Fountain Inn
23 all the way down to the city of Laurens; did it not?

24 A. That's correct.

25 Q. In fact, you testified that was built in the 1950's?

1 A. Correct.

2 Q. And that was when Laurens Glass was down here and
3 operating; is that right?

4 A. Yes, sir.

5 Q. All right. Now is it not true that in the middle
6 eighties you talked about expanding your system; that
7 there was a concern that CPW had that it needed another
8 transmission line from the Transco line down to Laurens; is
9 that not correct?

10 A. That's correct.

11 Q. All right. So the purpose of building these two lines
12 was not to serve this area, but to see that the City of
13 Laurens had a reliable supply of natural gas?

14 A. For all of its service area, yes, sir.

15 Q. All right. And the other line that was built that's
16 shown on your map, which is the 6-inch high pressure line,
17 that was just to balance the system and connect it in a
18 circular fashion; isn't that right?

19 A. That was to be sure we had another feed and those two
20 main feeders were connected, yes, sir.

21 Q. All right. So the money that CPW spent was to improve
22 its system and make sure the City of Laurens had a supply
23 of gas?

24 A. To be sure that its entire service area had a supply
25 of gas.

1 Q. This area where ZF is is fifteen miles from Laurens, ...
2 isn't it?

3 A. I'll take your word for it.

4 Q. All right. And it's about three miles outside of
5 Fountain Inn?

6 A. Again, I --

7 Q. The point is we're talking about practically being in
8 Fountain Inn's back door; isn't that right?

9 MR. ELLIS: Your Honor, I'm just gonna object on
10 relevance grounds because I think the statute says what it
11 says.

12 THE COURT: I'll allow it just for the purposes of
13 understanding.

14 MR. HOLMES: Thank you, Judge.

15 BY MR. HOLMES:

16 Q. You also -- that is, CPW also has to go through the
17 city of Gray Court; isn't that right?

18 A. Yes, sir.

19 Q. And so CPW's position as to the city of Gray Court it
20 has as its service area provided natural gas?

21 A. And has for many years, yes, sir.

22 Q. Okay. Do you happen to know by what authority the
23 Commission of Public Works has to provide natural gas
24 outside its boundaries?

25 A. You mean what section of code could I cite?

1 Q. I'm just asking if you know by what authority?

2 A. I can't say cite the section of the code, no, sir.

3 Q. Okay.

4 MR. HOLMES: Judge, I think that's all the questions I
5 have. Thank you.

6 THE COURT: Anything on redirect?

7 MR. ELLIS: Well, just a couple of things.

8 REDIRECT EXAMINATION

9 BY MR. ELLIS:

10 Q. One follow-up I want to be sure to get in, when you
11 were at the Laurens Commission of Public Works, what was
12 your title?

13 A. Well, I had various titles. When I first got out of
14 school and went to work there full-time, I was project
15 coordinator and later on project supervisor and then
16 project manager and I was promoted to assistant general
17 manager in 1982 and general manager in 1985.

18 Q. Okay. In 1992 when you drew this boundary line with
19 Mr. Elliott, what was your title then?

20 A. I was general manager.

21 Q. General manager of the Laurens Commission of Public
22 Works?

23 A. Yes, sir.

24 Q. Okay.

25 MR. ELLIS: I don't believe I have anything else.

1. Thank you.

2 THE COURT: All right. Thank you, sir. You can step
3 down,

4 THE WITNESS: Thank you, Your Honor.

5 (Witness excused.)

6 MR. ELLIS: Your Honor, the Plaintiff would like to
7 call Mr. Carey Elliott.

8 THE COURT: All right.

9 CAREY ELLISON ELLIOTT,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ELLIS:

13 Q. Would you state your name for the record, please,
14 sir?

15 A. Carey Ellison Elliott.

16 Q. Mr. Elliott, what is your current employment status?

17 A. Retired. I presently have been working part-time
18 with the Town of Calhoun Falls, South Carolina.

19 Q. Okay. You worked for the City of Fountain Inn for a
20 number of years, correct?

21 A. That's correct.

22 Q. And how long did you work there?

23 A. Twenty years.

24 Q. What was your position at the City of Fountain Inn?

25 A. Well, I had an official title and an unofficial

1 title. Officially I was considered a City employee.
2 Since, to my knowledge, City Council never created or
3 approved the title of administrative assistant or city
4 administrator or natural gas manager, unofficially, and
5 according to my duties and responsibilities, I acted as
6 city administrator and Fountain Inn natural gas manager.
7 Q. Are you the Carey Elliott that we have referred to as
8 sitting down with Mr. Smoak and working out a territorial
9 boundary for the service of natural gas?
10 A. Yes, sir.
11 Q. Okay. Tell me what you -- tell me what you recall
12 about working out that territorial boundary.
13 A. We met with Laurens CPW on one occasion in Laurens to
14 come to an agreement about a service boundary.
15 Q. And when you say we, who do you mean?
16 A. As I recall, Mayor -- the mayor at the time was with
17 me in a meeting with the manager, Mr. Coleman Smoak, at
18 his office in Laurens at CPW headquarters.
19 Q. So you and the mayor went and met with Coleman Smoak?
20 A. Yes.
21 Q. At the LCPW headquarters?
22 A. Yes.
23 Q. Tell me what happened.
24 A. Well, we discussed idea, looked at a map, and just
25 presented, in general, the -- the thought, the idea, that

1 we needed to set a boundary for the benefit of Fountain Inn
2 Natural Gas and also Laurens CPW so that there would be no
3 encroachment in the service areas.

4 Q. Okay. Was it important for the City of Fountain Inn
5 to know where it could serve and would not be serving?

6 A. Yes, sir.

7 Q. Okay. To the extent -- I may have covered this
8 already, but how did you actually come up with that
9 boundary line? Let me show you what's been marked as
10 Exhibit 1A, and that's the boundary line y'all agreed upon
11 at that time, right?

12 A. That's correct.

13 Q. Okay. Do you recall actually how you came up with
14 that particular line?

15 A. As best I can recall, that was sent to us from
16 Mr. Smoak who was manager of Laurens CPW.

17 Q. Okay. But do you -- did y'all actually sit down at
18 the table at that time and --

19 A. I don't recall -- I don't recall if the two of us
20 collaborated together to -- to draw this boundary. We
21 could have, but I don't recall that.

22 Q. Okay.

23 A. I simply received the map and drew the proposed
24 boundary.

25 Q. Okay. Well, looking at Exhibit 2, you wrote back and

1 said that that boundary line that was sent accurately
2 reflected what you agreed to, correct?

3 A. That's correct.

4 Q. Okay. After this boundary line was drawn, did the
5 City of Fountain Inn seek to observe the territorial
6 boundary while you were at the City of Fountain Inn?

7 A. Yes, we did.

8 Q. Okay. And how long were you at the City of Fountain
9 Inn?

10 A. Twenty years.

11 Q. Okay. And you left in what year?

12 A. '05.

13 Q. Okay. So up until -- from 1992 when this was first
14 drawn up until 2005, the City of Fountain Inn in providing
15 natural gas did attempt to observe that boundary line,
16 right?

17 A. In our daily operations, it was -- we did not encroach
18 that boundary.

19 Q. Okay. And just to show these to you because your
20 name is associated with it, please take a look at
21 Exhibits 3 and 4. And, just, again, that's a discussion
22 you and Mr. Smoak had in 1994 about possible encroachment;
23 correct?

24 A. That's correct.

25 Q. And you believed that the City of Fountain Inn --

1 I'm sorry, that the LCPW may have crossed the line, right?

2 A. I did.

3 Q. And Mr. Smoak said that he did not agree with you
4 about that, correct?

5 A. He did.

6 Q. Okay. So that reflects you guys both -- both believed
7 there was a boundary there?

8 A. We did.

9 Q. Okay.

10 A. I did.

11 MR. ELLIS: Pardon me just one moment. I don't
12 believe I have anything further at this time. Thank you.

13 THE WITNESS: Thank you.

14 MR. HOLMES: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. HOLMES:

18 Q. Mr. Elliott, to your knowledge did the City Council of
19 Fountain Inn ever have a public meeting where they adopted
20 a resolution that was prepared by Mr. Smoak to agree to any
21 kind of boundary agreement?

22 A. To my knowledge, and as I recollect, the City Council
23 of Fountain Inn never ratified this boundary agreement.

24 MR. HOLMES: All right. Thank you. I don't have any
25 further questions, Your Honor.

1 THE COURT: Thank you, sir. Anything else?

2 REDIRECT EXAMINATION

3 BY MR. ELLIS:

4 Q. The only thing I'd follow up with is though -- even
5 though this was not formally ratified, just, again, the
6 City of Fountain Inn Natural Gas Service --

7 MR. HOLMES: Asked and answered, Judge, and it's not
8 responsive to anything on cross.

9 MR. ELLIS: Withdrawn. That's fine.

10 THE COURT: All right. Thank you, sir.

11 BY MR. ELLIS:

12 Q. Was the City of Fountain Inn ever asked to ratify it?

13 A. Pardon me?

14 Q. I'm sorry. Was the City of Fountain Inn ever asked to
15 ratify it?

16 A. Not to my knowledge.

17 Q. Okay.

18 A. I don't recall.

19 MR. ELLIS: Okay. I don't have anything further.

20 THE COURT: Thank you, sir. You may step down.

21 (Witness excused.)

22 MR. ELLIS: Your Honor, the Plaintiff would like to
23 call Dale Satterfield next.

24 IRVIN DALE SATTERFIELD,

25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q. Would you state your name for the record?

A. Irvin Dale Satterfield.

Q. Mr. Satterfield, where are you currently employed?

A. The City of Clinton, South Carolina.

Q. And were you ever employed by the Laurens Commission of Public Works?

A. Yes, sir, I was.

Q. And what years were you employed there?

A. I went to work full-time in August of 1982 and then retired January 31, 2014.

Q. So you just left just this year, correct?

A. Yes.

Q. Okay. And what was the most recent title you had at the Laurens Commission of Public Works?

A. General manager.

Q. Okay. General manager. So as general manager, did you oversee the natural gas operations as well as any other operations?

A. Yes, sir. Natural gas, water, sewer, electric, and some economic development.

Q. Okay. So when did you become the general manager of the LCPW?

A. July of 2006.

1 Q. Okay. So you succeeded Coleman Smoak immediately?

2 A. That is correct.

3 Q. Okay. So prior to becoming general manager, what
4 title did you have?

5 A. Assistant to the general manager.

6 Q. Okay. And how long did you have that title, do you
7 recall?

8 A. No, sir, not specifically.

9 Q. As the general manager of the LCPW, were you familiar
10 -- were you familiar with where the LCPW was providing
11 natural gas?

12 A. Yes, sir.

13 Q. Okay. In this exhibit that we've previously marked as
14 Exhibit 1A, you're familiar with the LCPW providing natural
15 gas on the Laurens side of this map, right?

16 A. That is correct.

17 Q. Okay. And did the Laurens CPW, while you were there,
18 did it provide gas service to customers all throughout the
19 territory?

20 A. That is correct.

21 Q. All right. And you also provided to customers up in
22 the -- up in the northern portion, to what is now the
23 Owings Industrial Park?

24 A. That is correct.

25 Q. Okay. How did this dispute -- let me ask you this.

1 Prior to 2011, were you aware of any disputes between the
2 LCPW and the City of Fountain Inn over providing natural
3 gas within the territory?

4 A. No, sir.

5 Q. Okay. How did this dispute with the City of Fountain
6 Inn arise?

7 A. We were contacted about a project that was looking at
8 the Owings Park, Project Octagon. We were given specific
9 data on gas supply, how much there was needed. LCPC looked
10 at us and said you're the provider for that area. As the
11 State -- the Department of Commerce Book stated, LCPW was
12 the natural gas provider, so we took that data and began
13 to put together what we thought the proposal would be to
14 Project Octagon. One of the main factors was there were --
15 as the new projects want, they were wanting duplicated
16 feeds to the site because if there were a natural gas
17 interruption due to a pipeline break or caused by someone
18 doing construction no gas at that point would be shut down,
19 so we had a duplicate feed that we planned for in the mid
20 eighties, so we were able to win the project, so.

21 Q. Okay. So was the City of Fountain Inn involved in
22 this matter as well?

23 A. Not up to that point, no, sir.

24 Q. Okay. How did it come about that the City of Laurens
25 -- that the Laurens CPW began to understand that there

1 was a dispute with the City of Fountain Inn over this
2 territorial boundary?

3 A. We were approached by -- if I remember correctly, we
4 were approached by Marvin Moss --

5 Q. Who is Marvin Moss, sir?

6 A. He is the economic development director for Laurens
7 County -- Laurens County Development Corporation. He
8 informed us that Fountain Inn was going to put in a
9 proposal on the project, too.

10 Q. Okay. And as the general manager of the LCPW, how did
11 you react to that?

12 A. Very defensively because we assumed that it was our
13 territory. We had done a lot of work and help on that
14 project, so.

15 Q. So you believed at that time that the LCPW had the
16 right to serve the new company coming in and the City of
17 Fountain Inn did not, right?

18 A. That is correct. Without a doubt.

19 Q. Okay. And you were informed that the City of Fountain
20 Inn had decided to put in a bid to come and serve it,
21 correct?

22 A. That is correct.

23 Q. Okay. And just to clarify, the company that we're
24 talking about, is that ZF?

25 A. Yes, sir.

1 Q. Okay. Let me show you what we've previously marked as
2 Exhibit 5. Do you recognize that map?

3 A. Yes, sir. I think the red line denotes what the
4 territory boundary was agreed to in 1992.

5 Q. Okay. And what do the yellow lines show?

6 A. The yellow lines would show the -- I believe the
7 backbone natural gas system.

8 Q. Okay. And it says ZF in the triangle here. What does
9 that denote?

10 A. ZF is the project that we were fortunate enough to
11 land. ZF Transmissions' Project Octagon was derived from
12 the eight-speed transmission.

13 MR. ELLIS: Okay. Your Honor, I'd like to offer
14 Exhibit 5 into evidence.

15 THE COURT: All right.

16 MR. HOLMES: No objection.

17 THE COURT: All right. That's 5?

18 MR. ELLIS: That's 5. Plaintiff's 5.

19 (Plaintiff's Exhibit Number 5, a map, was admitted
20 into evidence.)

21 BY MR. ELLIS:

22 Q. Mr. Satterfield, tell me about the discussions that
23 were had regarding Fountain Inn's possibly submitting a bid
24 on this project?

25 A. To make sure that we were correct, my -- one of my

1 first calls was to our natural gas consultant, Heath and
2 Associates, to make sure that the project was in what we
3 believed to be our service area and then beyond that I
4 contacted Fountain Inn somewhere along the way. Clinton --
5 Mr. Stan Bryson from Clinton Newberry Natural Gas gave me a
6 call to confirm that a disagreement had initiated and from
7 that I convened a meeting between Laurens CPW, City of
8 Fountain Inn and Clinton Newberry Natural Gas in our office
9 to discuss territorial issues.

10 Q. Okay. And did that meeting actually occur?

11 A. Yes.

12 Q. Okay. And who was at that meeting?

13 A. Myself, assistant manager John Young.

14 Q. He's assistant manager of the LCPW?

15 A. At that time, yes, sir.

16 Q. Okay.

17 A. I believe our gas purchase person was in there, Keith
18 Wood, and then Mike Pitman of Fountain Inn, and Mr. Eddie
19 Case was in there. I believe he was city administrator,
20 I'm not certain of his title, and then Stan Bryson of
21 Clinton Newberry Natural Gas. And Stan may have had one
22 person with him. I don't recall.

23 Q. Okay. And tell me what you recall about the meeting.

24 A. Well, of course, my concern was to try to convene a
25 meeting of the suppliers and try to reach a solution and

1 then solve this issue. The discussions were -- I made --
2 I tried to offer some kind of compromise between Laurens
3 and Fountain Inn. That compromise was rejected firmly.
4 Then Mr. Pitman asked Mr. Bryson what kind of territorial
5 agreement we had between Laurens CPW and Clinton Newberry
6 Natural Gas and to the best of my knowledge his response
7 was the exact same agreement you have with Laurens CPW and
8 that's what we abide by and had lived by.

9 Q. Okay. Just to be clear, can you tell from looking at
10 this map if the ZF plant is clearly within the territory
11 that LCPW claims?

12 A. Yes, sir, it is. I have no question.

13 Q. The red line here represents the northern part of the
14 boundary?

15 A. That is correct. And the red line is drawn the way it
16 is because at the time the boundary was agreed to by the
17 two managers of the system, we had already had existing
18 customers up there, so they went around those customers at
19 that time.

20 Q. So LCPW had contracts to serve customers all along --
21 all up in this area shown by the boundary?

22 A. That is correct, yes.

23 Q. Okay. And while you were there, did the LCPW continue
24 to maintain customers all throughout the disputed area?

25 A. Oh, yes, sir. Every year the CPW Board looks at the

1 budget, the capital improvement plan, the expenditures for
2 operations and maintenance for the gas system, as well as
3 the other three utilities, and each year that budget is
4 voted on and adopted by the Board of Commissioners to
5 maintain the system.

6 Q. Okay. And when a customer comes in, a residential
7 customer for natural gas, how do they get natural gas? Do
8 they fill out a form?

9 A. They do. We have a customer agreement form. Of
10 course, we get the basic information, billing information,
11 run a credit history and all of those pertinent things that
12 you need to establish service, and then they sign the
13 customer agreement card and we provide services.

14 Q. So you have a written agreement to provide service to
15 your customers, right?

16 A. Correct.

17 Q. All right. Let me show you a document -- let me show
18 you a document. Do you recognize that document?

19 A. Yes, sir. That is the Laurens CPW contract proposal
20 to ZF, which was later signed and executed by both parties,
21 us and ZF Transmissions, Incorporated.

22 Q. Okay. And you actually -- did you actually sign this
23 document on behalf of the LCPW?

24 A. I did, yes, sir.

25 Q. Okay. And then -- the copier is not great here, but

1 this was also signed by ZF?

2 A. That is correct, yes.

3 Q. So you did enter into a written contract with ZF to
4 provide gas services?

5 A. That is correct.

6 Q. Okay. Prior to 2011, had the City of Fountain Inn
7 ever tried to run a line into the area that the LCPW was
8 serving?

9 A. Not prior to, no, sir.

10 Q. Okay. So while you were at the LCPW, you would
11 confirm that the LCPW tried to respect the territorial
12 boundary?

13 A. Yes, sir. It's a difficult boundary to follow. As
14 you can see, it -- it doesn't follow established roadways
15 or landmarks, and one section of the boundary is the actual
16 county line between Laurens and Greenville County.

17 Q. Okay. Just let me interrupt you there. That's the
18 blue line, right? That's the county line, right?

19 A. Yes, Laurens/Greenville. You know, it's a difficult
20 line to follow, but we try to, yes, sir.

21 Q. Okay. And up -- prior to 2011 the City of Fountain
22 Inn to your knowledge was attempting to respect that
23 boundary line as well, correct? Prior to the case.

24 A. As far as I know, yes, sir.

25 Q. At some point after this case was filed, did the City

1 of Fountain Inn attempt to -- well, not attempt to, did
2 they actually run a line into the disputed territory?

3 A. Yes, sir, they did.

4 Q. Okay.

5 MR. ELLIS: May I ask the witness to step down?

6 THE COURT: Sure. That's not a problem.

7 (Whereupon, the witness steps down from the witness
8 stand.)

9 BY MR. ELLIS:

10 Q. Looking on the Power Point, can you just show
11 generally where the line was run, the Fountain Inn line was
12 run?

13 A. It was run, of course, right off of 385, come down --
14 and this industry that was mentioned earlier is where this
15 line goes around. They had to finagle -- and I withdraw
16 that word. They had to work diligently to get some private
17 easement to come around the -- I think it's DW Packing now,
18 come around and then get back on the county road, but they
19 basically come down Old Laurens Road right beside our gas
20 line.

21 Q. Okay. So the City of Fountain Inn then ran a line.
22 So the City of Fountain Inn then -- that's the first time
23 you know of them actually having a line in this territory?

24 A. Yes, sir.

25 Q. Got you. And they actually began serving customers in

1 the territory, correct?

2 A. Yes, sir. They currently serve the second industrial
3 customer.

4 Q. Okay. Do you know who that is?

5 A. Yeah. I can't -- I know it, but I can't pull it off
6 my -- my brain.

7 Q. Okay.

8 THE COURT: Now that's Fountain Inn serving another?

9 MR. ELLIS: Yes, sir. What that is, is prior to 2011
10 our position is both sides were respecting the territory.
11 After 2011 when a new gas manager came to Fountain Inn,
12 they chose then to begin running lines into the territory,
13 and I'm just establishing that's why we're here.

14 THE COURT: I got you.

15 MR. ELLIS: Because we've got an actual dispute as to
16 their right to do that.

17 MR. HOLMES: The second customer is Uniscite.

18 MR. ELLIS: Okay. Uniscite.

19 BY MR. ELLIS:

20 Q. Are you familiar with this document that we've
21 previously marked as Exhibit 6? You know what those lines
22 are?

23 A. Yes. I couldn't hardly see it.

24 Q. I'm sorry. I can actually give you Exhibit 6. And
25 the red lines on there show the -- I'm sorry -- where the

1 gas lines are for the LCPW, right?

2 A. Yeah. I described those as the backbone of the system
3 that serves that area. We serve customers off of those
4 lines with what is known as a farm tap step-down pressure
5 so that you can utilize it in a residential instance, but
6 then also serves many other distribution lines that are
7 smaller than the 6-inch and 10-inch lines.

8 Q. And certainly prior to the filing of this action, the
9 City of Fountain Inn did not have any comparable lines like
10 that in the disputed territory, right?

11 A. No, sir, it was unserved, and then we had many
12 requests for natural gas service and so we planned and
13 prepared to serve the area.

14 Q. All right. And the Laurens CPW -- does this give
15 Laurens CPW the capacity it needs to provide services in
16 the territory?

17 A. Yes, sir. The capacity exceeds the current demand.
18 As I said earlier, the main -- the main issue with ZF
19 Transmissions is reliability of service was key to them and
20 wanting a dual feed to their property, and that's what the
21 6-inch high pressure line was, a duplication, by the CPW in
22 the mid eighties. When they ran the 10-inch line, that was
23 in case you had an interruption with the 8-inch line you
24 would have another feed to our system in Laurens, but by
25 tying them together if you have an interruption or a break

1 in either one of those lines we can feed our system by
2 means of the other, so the dual feed was key.

3 Q. And just to be clear, the LCPW has got customers all
4 along the boundary line?

5 A. Yes, sir. From the early eighties on, yes, sir.

6 Q. Okay. And customers throughout the boundary; is that
7 right?

8 A. That's correct.

9 Q. All right. Throughout the territory?

10 A. Yes, sir.

11 Q. Let me show you this document. Do you recognize this
12 document, Mr. Satterfield?

13 A. Yes, sir, I do.

14 Q. What is this document?

15 A. This document was a resolution that after the dispute
16 arose, it was publicly re-entered by -- that we believed
17 that area was the service area for the Laurens CPW; that
18 with the 1992 agreement Fountain Inn gave us permission to
19 serve -- to designate that area as our service area, as
20 well as that same agreement designated the north side of
21 that boundary line as their service area.

22 Q. And was this resolution, in fact, adopted by the LCPW?

23 A. Yes, sir.

24 Q. Okay. As the gas manager -- I'm sorry. As the
25 general manager of the LCPW, was it important to you, to

1 the LCPW, to understand the areas that it could serve?

2 A. Yes, it's important.

3 Q. Okay.

4 A. Yeah, the general manager of the CPW has -- our
5 department has been governing that more day-to-day over
6 those issues, but it is important for the general manager
7 to have a good understanding of the service areas.

8 Q. Okay. And why is that?

9 A. Well, we don't want to violate any service area
10 agreements.

11 Q. Okay. And do you also use the funds to meet any
12 revenue obligations?

13 A. Yes, sir. We have a budget for operations and
14 maintenance and the natural gas industry complying with all
15 the regulatory compliance issues, safety, all of those
16 things, are key to budgeting and can affect your budget
17 from year to year, so that's an extremely important part of
18 the -- the managing of the natural gas system. We've seen
19 that -- in recent months we've all seen instances on the TV
20 where we have a part of New York blow up and kill five or
21 six people. There's incidents across the country. What
22 that means is the regulatory issues are gonna become even
23 more important and basically safety is gonna become key, so
24 we've got to make sure we can do all we can to strengthen
25 our system.

1 Q. What about the payment of bond obligations?

2 A. Payment of bonds? You've got to collect revenues
3 sufficient to cover those annual service to debt
4 requirements and so you have to vote on that as well.

5 MR. ELLIS: Pardon me just one moment. Your Honor,
6 I would like to offer this ZF contract as Plaintiff's
7 Exhibit 7.

8 MR. HOLMES: Without objection.

9 THE COURT: Without objection.

10 (Plaintiff's Exhibit Number 7, a contract, was
11 admitted into evidence.)

12 MR. ELLIS: Do I have Exhibit 6 in?

13 MR. HOLMES: Judge, if he presented them, I don't have
14 an objection to them. I consider them in.

15 THE COURT: Okay. And before we stop today, y'all
16 just double-check and make sure I've got everything.

17 MR. ELLIS: Thank you. I wanted to check that.

18 (Plaintiff's Exhibit Number 6, a map, was admitted
19 into evidence.)

20 MR. ELLIS: Okay. I don't believe I have anything
21 else for this witness at this time.

22 THE COURT: Yes, sir.

23 MR. HOLMES: May it please the Court, Your Honor?

24 CROSS-EXAMINATION

25 BY MR. HOLMES:

1 Q. Mr. Satterfield, Laurens Commission of Public Works is
2 a combined utility; is that correct?

3 A. That is correct, yes, sir.

4 Q. Okay. So you -- so it provides electricity, water,
5 sewer, as well as natural gas?

6 A. That is correct, in differing territories.

7 Q. All right. The water, sewer, and electricity is
8 primarily in the city of Laurens; is that correct?

9 A. Primarily, yes, sir.

10 Q. All right. It's the natural gas utility that spreads
11 far and wide beyond the city of Laurens; is that correct?

12 A. That's correct.

13 Q. Okay. So when you testified a few minutes ago about
14 the payment of bonds, the bonds that you have is for the
15 combined utility; isn't that right?

16 A. That is what's required, yes, sir.

17 Q. Well, I understand, but they're for the combined
18 utility, so these bonds are for everything, the water,
19 sewer, electricity, as well as natural gas; is that right?

20 A. Yes, sir.

21 Q. And the bonds have to be approved by the City of
22 Laurens?

23 A. That is correct, yes.

24 Q. And they have to be presented to the City Council of
25 Laurens and the City Council of Laurens approves them; is

1 that right?

2 A. That is because we have to have an easement though the
3 city for utilities.

4 Q. I understand that. And the City of Laurens is the one
5 that says that the CPW has to raise enough revenue to pay
6 the bonds?

7 A. That is correct. It's a revenue bond.

8 Q. All right. Are you familiar with the bonds that the
9 CPW has issued recently?

10 A. Not recently, no, sir. Some of them.

11 Q. All right. 2003?

12 A. I would have to go back and look.

13 Q. Well, isn't it true that the existing bonds just
14 refinanced the bonds that were done back in the eighties?

15 A. As the interest rates have come down over the last
16 twenty years, yes, sir, refinancing opportunities have
17 become favorable.

18 Q. Absolutely. And those were the bonds that were used
19 to build the western feeder line, I think as you describe
20 it, so that your system then had two different sources of
21 gas from the Transco line; is that right?

22 A. I believe that is correct.

23 Q. All right. And in the eighties, you also built the
24 6-inch high pressure line that was shown on there on
25 Stoddard Mill Road so that if either one of those lines was

1 cut you could provide natural gas to your area and that
2 line was built in the middle eighties as well; is that
3 right?

4 A. Yes, sir, that is correct.

5 Q. Okay. So the bonds that were issued for that
6 construction would have been back to the eighties
7 somewhere; is that right?

8 A. I can't honestly answer that question without looking
9 at them.

10 Q. All right. Now you have put into evidence Plaintiff's
11 Exhibit Number 7, which is the natural gas agreement with
12 ZF; is that correct?

13 A. That is correct.

14 Q. Now this copy is barely legible, but it looks like
15 CPW's signature is dated March 4, 2011; is that correct?

16 A. That is correct, yes. I signed the agreement and
17 then, in fact, e-mailed it to ZF, and I believe the
18 gentleman's name was Bob Capell.

19 Q. All right. And then on Page 4 -- well, I guess it's
20 Page 5 of the document, even though it says 4 of 4 at the
21 bottom -- I know why. Because it's ZF's signature without
22 yours; is that correct?

23 A. That's what appears on this page.

24 Q. What date was it signed?

25 A. I would have to get the original to --

1 Q. Where is the original?

2 A. It's in the office, I would assume.

3 Q. Okay. So you have no idea what date?

4 A. I don't know what date he sent that back to me, no,
5 sir.

6 Q. Well, you know you filed the lawsuit on March 30,
7 2011.

8 A. No, sir, I don't recall that date.

9 Q. Okay. Well, let me hand you a copy and ask you does
10 that help you to know when the lawsuit was filed?

11 A. Yes, sir.

12 Q. It was March 30, 2011?

13 A. Yes, sir.

14 Q. Okay. And in this complaint, you didn't have a
15 contract with ZF; is that right?

16 A. That would be correct.

17 Q. Okay. But you don't dispute that on March the 4th,
18 almost a month before you filed this lawsuit, you allege
19 that there's a contract with ZF?

20 A. No, sir. I signed the contract and sent it to ZF as
21 our proposal.

22 Q. All right. So this was actually a proposal that was
23 at some later date subsequently agreed to by ZF; is that
24 right?

25 A. That is correct, yes.

1 Q. Now you've also put into evidence the resolution
2 that's Number 11-03 that was adopted by CPW and the date
3 on -- of its adoption was March 30, 2011; is that right?

4 A. That's correct.

5 Q. The same day this lawsuit was filed?

6 A. Yes, sir.

7 Q. Okay. And you testified a few minutes ago about the
8 State of South Carolina saying that CPW was the provider
9 for this site; is that correct?

10 A. That is correct.

11 Q. Well, isn't it true that all this was was a
12 certification through the State of an industrial site that
13 identified potential sources of utilities so that a
14 potential buyer would know who they would look to to
15 provide utilities?

16 A. No, sir, that's not exactly correct. The
17 certification is a certification of an industrial site
18 so that when the industrial site is being shown to a
19 prospective industry, as much as one possibly can, all the
20 risks are removed for the industrial prospects so that they
21 know who the service providers are for all the utilities,
22 who the landowners are, agreements in place, so that they
23 can actually purchase the land should they decide to come
24 to a location. That's what that certification is for.

25 Q. How is that any different than what I just said?

- 1 A. Yes, sir.
- 2 Q. Okay.
- 3 A. You said potential providers.
- 4 Q. All right. So you're claiming that the State of South
5 Carolina made CPW.-- that there is some document somewhere
6 that made CPW the provider for this area?
- 7 A. That is correct, and then the Owings Industrial Park
8 certification went through.
- 9 Q. Okay. So you're contending that either the Public
10 Service Commission, the South Carolina General Assembly or
11 the Governor's office actually made CP -- gave this as
12 their territory? Is that your claim?
- 13 A. Who certified that part is -- certified CPW as the
14 natural gas provider.
- 15 Q. Okay. Where is the -- where is the State of South
16 Carolina certification?
- 17 A. On that book.
- 18 Q. Well, where's the book? We're in court. Where is it?
- 19 A. Well, there's one in our office, there's one in
20 Laurens County Development Corporation's office.
- 21 Q. All right. Mr. Satterfield, you had a meeting with
22 not only the City of Fountain Inn, but also Clinton
23 Newberry Natural Gas Authority; isn't that right?
- 24 A. That is correct.
- 25 Q. All right. And that was about the ZF plant?

1 A. That is correct.

2 Q. And you know that Clinton Newberry also submitted a
3 proposal to ZF?

4 A. That is correct.

5 Q. All right. What territorial agreement do you have
6 with Clinton Newberry Natural Gas?

7 MR. ELLIS: Your Honor, I would object on relevance
8 grounds. This is a dispute between the LCPW and the City
9 of Fountain Inn over a specific area. We're not litigating
10 a hypothetical that's not before the Court.

11 THE COURT: Yeah, if you would rephrase your question
12 just to sort of hone in on what we're dealing with. I
13 mean, if you feel like -- if you feel you need to ask it,
14 I'm not concerned about it since it's nonjury, but go
15 ahead.

16 MR. HOLMES: All right.

17 BY MR. HOLMES:

18 Q. Did they -- did they submit a proposal?

19 A. Mr. Stan Bryson spoke to me by phone and told me that
20 he would not offer a proposal to ZF if Fountain Inn did
21 not, but if Fountain Inn was gonna offer a proposal, then
22 he would as well.

23 Q. But the point is Clinton Newberry is in this area,
24 Fountain Inn is in this area, and Laurens Commission of
25 Public Works is in this area. All three of them have lines

1 in this area; isn't that right?

2 MR. ELLIS: Your Honor, again, relevance because we're
3 fighting over a particular area between us that we claim is
4 our designation service. If we need to fight with Clinton
5 Newberry, we will at a later time.

6 MR. HOLMES: May it please the Court, Your Honor, the
7 argument is they're claiming this is their service area.
8 The point is there's now testimony that Clinton Newberry
9 has lines in this area, has made a proposal on this same
10 place. They're not a party to this litigation, the City of
11 Fountain Inn is, and what I'm saying is our position is
12 there isn't a service area at all and this shows that it's
13 not. They've simply chosen to come after Fountain Inn
14 because they had some private agreement with Clinton
15 Newberry to not go in and finish up submitting a proposal
16 on this site.

17 MR. ELLIS: Your Honor, there's not testimony that
18 Clinton Newberry has lines in this area or that they have
19 tried to invade our service area. I mean, the --

20 THE COURT: Have they indicated they were? I mean, do
21 you have some --

22 MR. HOLMES: Judge, in the -- and Mr. Satterfield,
23 which I can impeach with his own deposition, he said that
24 he knew that they were submitting a bid to the same place
25 that started this lawsuit. If they claim that that's their

1 territory, that invades this territory.

2 MR. ELLIS: No, sir, entering a bid doesn't invade the
3 territory. Running lines in there and actually serving
4 customers invades it. I mean, this is -- this is the
5 dispute. We decided to sue the City of Fountain Inn
6 because the City of Fountain Inn submitted this bid. That
7 meant that we have a dispute with them over this territory.
8 The City of Clinton Newberry -- there's not testimony in
9 the record and nobody from Clinton Newberry has been
10 identified as a witness or has been called to testify that
11 they are running lines in this territory or -- and besides
12 that, this is a just as a legal point, we would be entitled
13 to grant permission to someone else to run lines in a
14 territory. We have a dispute between LCPW and Fountain Inn
15 over the fact that they have decided to run lines in this
16 territory over our objection.

17 THE COURT: All right. I'll -- I'll allow you to
18 briefly delve into that and then move on. I mean, again,
19 I -- this really comes down to interpretation of the
20 statute, but I understand. Go ahead. Over your objection
21 I'll allow you to ask that question briefly.

22 MR. HOLMES: All right.

23 BY MR. HOLMES:

24 Q. Let me make sure I did ask it and you answered it, and
25 that is, do you have any knowledge as to whether or not

1 Clinton Newberry Natural Gas submitted a proposal to ZF?

2 A. I was told that they did after Fountain Inn submitted
3 theirs.

4 Q. All right. Now is there a territorial boundary
5 agreement with Clinton Newberry Natural Gas?

6 A. With whom?

7 Q. Does LCPW have a territorial boundary agreement with
8 Clinton Newberry Natural Gas?

9 A. Yes, sir, the same agreement we have with Fountain
10 Inn.

11 Q. Okay. And do you have that one with you?

12 A. No, sir, I do not have any with me.

13 Q. Let me hand you a document and ask you if you can
14 identify that, please, sir.

15 A. Yes, sir. That is a letter that I --

16 MR. ELLIS: Your Honor, I'm sorry, before this comes
17 in, I -- or he can -- he maybe can identify it, but I need
18 a moment to look at it. I --

19 THE COURT: I tell you what, do me a favor. Take a
20 moment. I need to take a quick break. I've got to call my
21 office for about three minutes or maybe five. Take a look
22 at it and I'll be right back.

23 You can step down, sir.

24 THE WITNESS: Okay.

25 (Recess taken.)

1 (Defendant's Exhibit Number 2 was marked for
2 identification.)

3 BAILIFF: All right. Let's all rise and come back to
4 order, please.

5 THE COURT: Thanks. Have a seat. Are y'all okay with
6 finishing this witness and then break? I know everybody's
7 hungry.

8 Okay. You can continue.

9 BY MR. HOLMES:

10 Q. Mr. Satterfield, I've handed you a letter dated
11 March 30, 2011, that's addressed to Mr. Kenneth P. Walsh.
12 Do you recognize that?

13 A. Yes, I do.

14 Q. Is that a letter that you sent to him?

15 A. Yes, sir, it is.

16 MR. HOLMES: Your Honor, we'd move the introduction
17 of it.

18 MR. ELLIS: Your Honor, my objection would be
19 relevance. It is a letter he sent, but that's my
20 objection.

21 THE COURT: Okay. I'll allow it to be introduced.
22 Like I said, I'm gonna have to read through all of this
23 anyway. I might as well. More is better.

24 (Defendant's Exhibit Number 2, a 3/30/11 letter, was
25 admitted into evidence.)

1 BY MR. HOLMES:

2 Q. Mr. Satterfield, how do Commission members become
3 members of the Commission of Laurens CPW?

4 A. A five-member board is elected from two districts.
5 There is a majority district and a minority district.

6 Q. That's enough. I just wanted -- they're elected?

7 A. Yes, sir.

8 Q. All right. And what terms do they serve?

9 A. They serve 6-year staggered terms.

10 Q. Staggered terms?

11 A. Yes, sir.

12 Q. Okay. Now is it not true that you were not -- you
13 didn't participate at all in any discussions in the 1990's
14 about a territorial boundary?

15 A. That is correct.

16 Q. All right. And is it also true that until the ZF
17 issue came up, you weren't even aware there was a
18 territorial boundary?

19 A. That is not true.

20 Q. Okay. Well, when did you discover there was a
21 territorial boundary?

22 A. Through the 1990's when Mr. Smoak was negotiating
23 this territorial boundary, I was either office manager or
24 assistant to the general manager at that time and was in
25 and out of the conference room as those discussions were

1 being held.

2 Q. All right. But you don't know of any resolution that
3 was prepared to adopt?

4 A. No, sir.

5 Q. All right. Did the Commission ever meet and vote on
6 it?

7 A. Not to my knowledge.

8 Q. All right. So your only knowledge was Mr. Smoak met
9 with some people at Fountain Inn and discussed the
10 boundaries?

11 A. That is correct.

12 Q. Okay.

13 MR. HOLMES: Judge, I don't have any other questions
14 of this witness.

15 THE COURT: Anything on redirect?

16 MR. ELLIS: Just briefly.

17 REDIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q. You were aware though that there was a service area
20 that the LCPW had that it did not cross over or go into the
21 Fountain Inn service area, right?

22 A. Yes, sir.

23 Q. Okay.

24 MR. ELLIS: Your Honor, we don't have anything further
25 of this witness.

1 THE COURT: Okay. Thank you. You can step down.

2 (Witness excused.)

3 THE COURT: Do y'all want to take about a 45-minute
4 break? We'll start back at 2:30 and get it done.

5 MR. ELLIS: Thank you. Your Honor, may Mr. Smoak
6 leave? We're not planning on recalling him.

7 MR. HOLMES: No objection.

8 THE COURT: All right. By the way, I realize we were
9 starting late because of me, so I'm sorry you had to wait.

10 (Whereupon, a luncheon recess taken at 1:45 PM.)

11 BAILIFF: Let's all rise and come to order, please.

12 THE COURT: Thanks. Have a seat. Okay.

13 MR. ELLIS: Thank you, Your Honor. The Plaintiff
14 calls Scott Heath.

15 ERIC SCOTT HEATH,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q. Would you state your name for the record, please?

20 A. My name is Eric Scott Heath.

21 Q. And, Mr. Heath, where are you employed?

22 A. With Heath and Associates, Shelby, North Carolina.

23 Q. And what is Heath and Associates?

24 A. We're a management and engineering consulting firm for
25 the natural gas industry.

1 Q. Tell me generally what types of things Heath and
2 Associates does.

3 A. About two-thirds of our business is pipeline
4 engineering and facility design. We design pipelines and
5 help our customers manage the projects. The other third is
6 either regulatory compliance or feasibility studies, rate
7 work, things like that. Management level consulting work.

8 Q. Okay. And this is for natural gas systems, right?

9 A. That's correct.

10 Q. Okay. Tell us your education background.

11 A. My educational background is I graduated from the
12 University of Tennessee in 1981 with a BS in mechanical
13 engineering.

14 Q. And did you ultimately receive a professional
15 engineer's license?

16 A. Yes, I did.

17 Q. Okay. And, just briefly, what's involved in getting a
18 professional engineer's license?

19 A. There's two exams that you take. One's called the
20 fundamental exam and you can take that after your junior
21 year in college and then you have to work under a
22 professional engineer for four or five years, it depends on
23 what state you're in, and then upon references from other
24 professional engineers you can be seated for a principal's
25 test and you need to pass another eight-hour test.

1 Q. Okay. Have you done any work for the Laurens

2 Commission of Public Works?

3 A. Yes, we've done a lot of work for the Laurens

4 Commission of Public Works.

5 Q. And have you also done work for the City of Fountain

6 Inn?

7 A. Yes, we've done lots of work for the City of Fountain

8 Inn.

9 Q. And both of them in the national -- natural gas
10 service?

11 A. Yes.

12 Q. Okay. Let me -- let me show you what we've previously
13 marked as Exhibit 6, the natural gas lines that are
14 currently installed. Are you familiar with those?

15 A. Yes, I am.

16 Q. Were you involved in the installation of these lines?

17 A. No, the -- the 8-inch high pressure line was built
18 in the fifties and the 10-inch and 6-inch connectors on
19 Stoddard Mill was built in 1985. I came back to work for
20 Heath and Associates in 1988.

21 Q. Okay. Based upon your understanding of natural gas
22 lines and the installation, have you been involved in
23 installing lines like that?

24 A. Yes, I have.

25 Q. Okay.

1 A. And we've been involved in feasibility studies in this
2 area and extensions off these lines.

3 Q. Okay. What does it cost to install a system like the
4 LCPW has in the disputed area?

5 A. The 10-inch lines can be up to 50 or \$60 a foot. The
6 6-inch lines may be closer to \$40 a foot. That's an
7 all-inclusive price. We designed -- our firm designed the
8 10-inch line in 1985 and out of curiosity I looked at the
9 bid price on that and it was about \$2.2 million in 1985,
10 but that would be four to five times that cost in today's
11 dollars.

12 Q. That's the 10-inch line that's referenced on here?

13 A. That's correct.

14 Q. And I asked you earlier if you were involved. Heath
15 and Associates was involved with the installation of the
16 10-inch line?

17 A. We designed it. Construction management, yes, sir.

18 Q. It was also involved in the 6-inch line?

19 A. Yes, sir.

20 Q. Okay. Now the 8-inch line, did that precede Heath and
21 Associates?

22 A. To my knowledge, we were not involved in that line.

23 Q. Okay. Can you give just a general estimate of what
24 the total cost of installing a system like the LCPW has?
25 It's several million dollars, right?

1 A. Oh, yeah. I mean, to replicate the high pressure
2 distribution lines between Transco and the city of Laurens
3 would be \$10 million. Up there.

4 Q. Is it significant for your customers to have some
5 knowledge of where they're going to be able to serve?

6 A. Absolutely.

7 Q. Why is that?

8 A. Well, when you look at a capital expense, you want to
9 get some kind of idea what kind of revenue it's going to
10 bring in and so you look at the service territory and
11 estimate the number of customers it might connect and the
12 revenue associated with that and so you want to know for
13 that reason.

14 Q. Does Heath and Associates do work for other municipal
15 gas providers besides Fountain Inn and LCPW?

16 A. Yes, sir.

17 Q. Okay. Typically do municipal gas providers try to go
18 after the same service territory or is --

19 MR. HOLMES: Objection; relevance.

20 THE COURT: Sustained. I mean, I understand that they
21 may go after different areas.

22 BY MR. ELLIS:

23 Q. Okay. Well, is there an engineering reason why it's a
24 good idea for one utility to provide -- or one municipal
25 utility to provide natural gas in an area and not have

1 another municipality providing in the same service in the
2 area?

3 A. Yeah, there's several reasons. One reason is when
4 you deploy capital to serve an area you want to get as
5 much payback as you can. So if you had an area where two
6 utilities were extending their lines and dividing the line
7 -- dividing the load and the revenue associated with it, it
8 may be that neither one would see it feasible because the
9 capital would be the same where the revenues relating to it
10 would be half as much. So that's important, you know, for
11 the investor-owned systems. The State -- the State of
12 South Carolina assigns franchise territories that prohibit
13 one investor-owned from going into the other's territory
14 just for that reason to get the best use of capital
15 employed. There's also safety-related reasons and that is
16 these lines have to be maintained from both -- there's leak
17 surveys done where instruments are passed over the pipe
18 looking for potential leaks and if you've got two lines in
19 the same road or maybe on the same side of the road, you
20 don't know which one is leaking, and it can cause some
21 confusion. If you had an emergency where you had to dig up
22 a line and shut it down and for some if you didn't have a
23 valve nearby, sometimes it's hard to identify which pipe --
24 whose pipe is whose if they're in the same vicinity.

25 Q. Okay. Mr. Heath, you've been present while we've

1 talked about this map that was drawn in 1992 setting up a
2 boundary. Were you involved in that at all?

3 A. Yes, sir, I was.

4 Q. Okay. How were you involved in that?

5 A. At the time, we were working for both Fountain Inn
6 and for Laurens. We were engineering expansions on both
7 systems and I got a call one day from Coleman Smoak and
8 he was very upset in that he said that we were helping
9 Fountain Inn encroach on their territory across the
10 territorial boundary, and at that point in time I was not
11 aware there was a territorial boundary and I was not aware
12 where it was or what might happen, and so we did not want
13 to offend either one of our customers, we wanted to serve
14 both of them well, and so we -- we were involved in a
15 number of phone calls and the meeting that was subsequently
16 set up that preceded the November 1992 letter that has been
17 referred to in the proceedings.

18 Q. Okay. And were you actually present at the 1992
19 meeting --

20 A. Yes, sir.

21 Q. -- between the LCPW representatives and the City of
22 Fountain Inn?

23 A. Yes, sir.

24 Q. And do you recall who was there?

25 A. Yes, sir.

1 Q. Okay. Who was there?

2 A. Coleman Smoak was there, Dale Satterfield was there,
3 and Ray Craft was there from Laurens CPW. And from
4 Fountain Inn, Mayor Ben Davis was there, Carey Elliott was
5 there and Sam Butler was there, and I was there and my
6 father, Charles Heath, was there.

7 Q. Okay. And do you recall how the line that's on
8 Exhibit 1A got drawn?

9 A. Well, apparently there had been some prior discussions
10 between Laurens and Fountain Inn because in Coleman's --
11 Coleman Smoak, the general manager at the time, in his mind
12 there was a point at which the territories had a boundary
13 line. I don't know what that boundary line looked like,
14 but clearly we had designs and pipelines for Fountain Inn
15 that were south of that line.

16 Q. Okay.

17 A. And so there was a discussion among everyone present
18 about where the line is or where it should be and there was
19 discussion about this road and that road and where existing
20 customers were and ultimately someone got out a pen or a
21 highlighter and hand-drew the line that is represented on
22 that document.

23 Q. I want to show you a document that you gave to me
24 earlier. Do you know what this document is?

25 A. Yeah, that's the -- that's the -- we very much wanted

1 to be included on correspondence between the two because we
2 didn't want to disrespect anybody's service territory or
3 agreement, so we were copied on it. I've got lots of
4 copies in my office. There are copies in the Fountain Inn
5 file and there's copies in the Laurens file, and this is --
6 I believe this was the -- one of the copies that came from
7 either Laurens or Fountain Inn.

8 Q. Okay. What I've just shown you, is this a larger
9 version of what's on Exhibit 1A?

10 A. Yes.

11 Q. Okay. And this map actually shows what the roads are
12 and the locations of the roads?

13 A. It's a little easier to follow.

14 Q. Okay. So looking -- looking at this, looking at
15 Exhibit 1A, do you know where those lines actually are?

16 A. Yes, sir.

17 Q. Okay. So you can -- as a consulting engineer, you
18 know how to stay on one side of the boundary or the other?

19 A. Yes, sir. There's -- there are more roads in
20 existence today than there were when we drew that line and
21 so there were some subdivisions built right on the boundary
22 line that were somewhat in question, but I would say that
23 we could replicate where that line is within, you know,
24 3- or 400 feet. So it's easy to determine as far as I'm
25 concerned.

1. Q. Okay. Thank you,

2. MR. ELLIS: Your Honor, I discussed this with David
3. earlier. This is the one copy I have of this. I would
4. like to offer -- I believe I would like to offer this into
5. evidence, but I only have one copy of it.

6. MR. HOLMES: I don't have an objection to putting this
7. in.

8. THE COURT: Yeah, why don't you introduce it and then
9. substitute -- make a copy at the break and substitute it,
10. if that's all right.

11. MR. ELLIS: Thank you. So we would like to offer this
12. in evidence as Exhibit 9, I believe, for the Plaintiff.

13. THE COURT: Okay. Without objection.

14. (Plaintiff's Exhibit Number 9, a map, was marked and
15. admitted into evidence.)

16. BY MR. ELLIS:

17. Q. Now after this line was drawn on the map and y'all
18. knew where the line was, were you involved in continuing to
19. do work for LCPW and the City of Fountain Inn?

20. A. Yes, sir.

21. Q. Okay. And did you try to respect the boundary lines?

22. A. Yes, sir, we respected the boundary lines.

23. Q. Okay. Respected them both by LCPW and Fountain Inn?

24. A. That's correct.

25. Q. Okay. Looking at these lines, and I'm asking this as

1 you being a consulting engineer, do you -- does the LCPW
2 have the necessary facilities and capacity to provide
3 service throughout the disputed territory that LCPW claims
4 here?

5 A. Yes.

6 Q. Okay.

7 MR. ELLIS: Pardon me just one moment.

8 THE COURT: Sure.

9 BY MR. ELLIS:

10 Q. Let me go over something just with you real quickly
11 and clear something up. I believe you said the 10-inch gas
12 line was \$2.2 million in 1985; is that right?

13 A. Yes, it was -- there were more -- there was a project
14 that was the 10-inch line from Fountain Inn to Laurens and
15 it had several 6-inch laterals off of it and that was --
16 they were starting on the road with one of the laterals.

17 Q. Okay. And the 6-inch line, do you know what that cost
18 to put in?

19 A. No, I don't know what that independent part of the
20 project cost.

21 Q. Just based upon your experience as a consulting
22 engineer.

23 A. Well, it probably cost -- to replicate it, it probably
24 cost \$40 a foot.

25 Q. Okay.

1 A. So back in -- back in 1985 it might have cost \$10 a
2 foot.

3 Q. Okay. Just given the length of the line, do you know
4 about how much that would be?

5 A. I don't know how long that road was. I'm sorry.

6 Q. And then the other line was put in in the 1950's?

7 A. That's right.

8 MR. ELLIS: All right. Nothing further.

9 MR. HOLMES: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. HOLMES:

13 Q. Mr. Heath, you got an angry phone call from Mr. Smoak
14 about why you were working against them for Fountain Inn
15 and crossing a line, right?

16 A. That's right.

17 Q. All right. So you were trying to mediate between two
18 clients that you have?

19 A. That's correct.

20 Q. All right. You had an interest in keeping both sides
21 happy?

22 A. Yes, sir.

23 Q. Okay. Just like today?

24 A. Yes, sir.

25 Q. Are you still working for Fountain Inn today?

1 A. We haven't worked for Fountain Inn for -- in about
2 five years.

3 Q. All right. Now looking at this exhibit, which I think
4 is Plaintiff's Exhibit Number 6, tell me in the area around
5 that boundary today how is that property used. Are you
6 familiar with it?

7 A. I haven't been in that part of Laurens County in a
8 while. I mean, there's been a lot of residential roads
9 starting out from Greenville to Simpsonville and Fountain
10 Inn, so there's a lot of residential growth throughout
11 Fountain Inn that we know of.

12 Q. Well, this looks like Plaintiff's -- Defendant's
13 Exhibit Number 2 is a Google map. There's not anything
14 remarkable except green all over it, right? In fact, it's
15 farm land today, it was farm land in 1992. The vast bulk
16 of this property has all just been farm land; is that
17 right?

18 A. Yes, sir, but -- yes, sir.

19 Q. Okay. So you're not telling the Court today that
20 Laurens CPW spent ten plus million dollars to build the
21 lines depicted on that just so that they could serve this
22 area in northern Laurens County. You're not saying that,
23 are you?

24 A. That's not the sole reason, but the reason to expand
25 their service territory was a part of the reason that that

1 line got built and other lines because, you know, going
2 back to the 1970's there were curtailment and gas systems
3 really couldn't expand and when natural gas was deregulated
4 in the eighties and the boom -- this economic boom in the
5 U.S., there was a lot of pent up interest in needing to
6 expand natural gas systems to go serve areas and there's
7 many areas that were green like that that had subdivisions
8 on it with three or four hundred homes left and right. So
9 we were -- we were very busy in the late eighties and
10 nineties expanding Fountain Inn's system, expanding
11 Laurens' system, expanding a lot of our clients' systems to
12 put in the infrastructure so that when those subdivisions
13 came that we would have it, we'd be ready for the change.

14 Q. So you're claiming that there are subdivisions of
15 three and four hundred houses in northern Laurens County
16 now?

17 A. There probably is.

18 Q. Okay. Do you know where they are?

19 A. I know where quite a few of them in Greenville County
20 are right down by the line.

21 Q. Okay. In the 1950's when the original line was built,
22 the one that would be on the right-hand side of this map or
23 on the eastern side, I suppose that was built so that the
24 city of Laurens had a supply of natural gas; isn't that
25 right?

1 A. Yes, sir.

2 Q. I mean, they couldn't get natural gas anywhere else
3 because they had to come up here to Transco in Fountain
4 Inn.

5 A. That's right.

6 Q. Is that right?

7 A. Yes, sir.

8 Q. Okay. Now even though you testified you weren't
9 involved in the engineering of the line on the western
10 side, that gave Laurens another source of gas in case the
11 one on the east got cut; is that right?

12 A. Right, because they were expanding their system
13 because their load was growing and they felt like --
14 well, two reasons. They wanted more capacity so they
15 could serve more area because not only was the residential
16 areas expanding, but industrial areas were expanding, and
17 industry was coming to South Carolina in the eighties and
18 nineties and they wanted to have the infrastructure to
19 serve it.

20 Q. I see. Okay. Now that line goes -- that is, the
21 western line, goes all the way down to the city of Laurens,
22 doesn't it?

23 A. Yes, sir.

24 Q. All right. And the purpose of the 6-inch high
25 pressure -- you were in the courtroom when both

1 Mr. Satterfield and Mr. Smoak testified that the purpose
2 of building the 6-inch line was so that if either one of
3 the other lines was cut they still had a supply of natural
4 gas.

5 A. Yeah, it has two functions. It brings gas service to
6 that part of the -- that part of the county and it also
7 provides for operational flexibility about whether, you
8 know, if either one of the lines between the point where
9 it's connected and Transco gets interrupted that that gas
10 can backflow and feed other parts of the system.

11 Q. So your testimony today is that even if the Transco
12 line was in the dead center of the city of Laurens, that
13 Laurens would have built those kind of lines all the way up
14 to Fountain Inn to serve that area? Is that what you're
15 saying?

16 MR. ELLIS: Objection; relevance. He's asking a
17 hypothetical.

18 THE COURT: Well, ask him if he knows the answer.
19 If he knows the answer, he can testify to it. If he
20 doesn't --

21 A. I'm not -- I'm not testifying. That's not my
22 testimony, no, sir.

23 Q. The reason those lines exist is because the only
24 source of natural gas for Laurens County is inside the city
25 limits of Fountain Inn.

1 A. Right. In order to provide additional capacity and
2 redundancy in supply to Laurens and the entire service
3 territory, the second line was built.

4 Q. Okay. And Clinton Newberry Natural Gas have lines
5 that go through Laurens County?

6 A. That's correct.

7 Q. Do you know of anybody else that taps on, any other
8 natural gas authority?

9 A. Right where Laurens is tapped and Fountain Inn is
10 tapped, Piedmont Natural Gas has a tap a hundred feet away,
11 so Piedmont is in the city of Fountain Inn also.

12 Q. All right. So that just happens to be where the
13 source of gas is?

14 A. That's correct.

15 Q. Do you know of any other way to transmit natural gas
16 from the city of Fountain to the city of Laurens outside of
17 having a pipeline like what's shown on Plaintiff's Exhibit
18 Number 6?

19 A. Well, I mean, the line to Laurens could make its way
20 to Fountain Inn -- or make its way to Transco and not
21 necessarily go through Fountain Inn, but the most direct
22 route, the most economical route, would be going through
23 Fountain Inn.

24 Q. Let me ask it a different way. Outside of a pipe
25 located anywhere, is there any --

1 A. You have to pipe gas, yes.

2 Q. Okay. You can't truck it, you can't put it in bottles
3 and ship it?

4 A. No, sir.

5 MR. HOLMES: I don't have any other questions.

6 THE COURT: Anything on redirect?

7 MR. ELLIS: Just quickly.

8 REDIRECT EXAMINATION

9 BY MR. ELLIS:

10 Q. But the LCPW actually serves the disputed area outside
11 the city of Laurens using those lines on the exhibit?

12 A. Yes, they do.

13 MR. ELLIS: Thank you. No nothing further.

14 THE COURT: All right, sir. You can step down.
15 (Witness excused.)

16 MR. ELLIS: Your Honor, the Plaintiff calls John
17 Young.

18 JOHN YOUNG,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ELLIS:

22 Q. Would you state your name for the record, please?

23 A. John Young.

24 Q. And, Mr. Young, are you employed by the Laurens CPW?

25 A. Yes.

1 Q. How long have you worked there?

2 A. Since 2000.

3 Q. Okay. And what is your title at the Laurens CPW?

4 A. Currently, general manager.

5 Q. Okay. And how long have you been the general manager?

6 A. Two months.

7 Q. And what was your job before you were the general
8 manager?

9 A. Assistant general manager.

10 Q. Okay. So do you now oversee the provision of natural
11 gas for the LCPW?

12 A. I do.

13 Q. Okay. I want to show you a document that was
14 previously marked as Plaintiff's Exhibit 8, which is the
15 resolution. Do you recognize that document?

16 A. Yes, I do.

17 Q. I just want to clarify that the territory that is
18 described in that document and the territory which is the
19 same as the territory that is described in Plaintiff's
20 Exhibit 1 and 1A, that's the territory that the LCPW here
21 is seeking to protect from any incursion by the City of
22 Fountain Inn; is that right?

23 A. That's correct.

24 Q. Okay. Does the LCPW -- we've asked several witnesses
25 this, but you're the guy that's there now, is LCPW still

1 providing natural gas by contract to customers throughout
2 the territory?

3 A. Yes.

4 Q. That disputed territory, I mean.

5 A. Yes.

6 Q. And let me ask you, there was a reference earlier to
7 Dispozoz.

8 A. Uh-huh.

9 Q. Is LCPW still providing natural gas service to
10 Dispozoz?

11 A. We are.

12 Q. And is Dispozoz within the line as is currently drawn?

13 A. Yes, I believe it is.

14 Q. Okay. Does the LCPW still have to spend money to
15 maintain the gas lines that are in use?

16 A. Yes, we do.

17 Q. Okay. Is it an expensive operation?

18 A. I believe so, yes.

19 Q. Okay.

20 MR. ELLIS: I don't have anything further. Thank you.

21 (Plaintiff's Exhibit Number 8, a resolution, was
22 admitted into evidence.)

23 THE COURT: All right.

24 MR. HOLMES: No questions.

25 THE COURT: Okay. Thank you, sir. You can step down.

1 (Witness excused.)

2 MR. ELLIS: Your Honor, all I have further are
3 deposition designations from Mike Pitman, which were served
4 yesterday. I'll be happy to read those or just hand them
5 to you.

6 THE COURT: You can just hand them to me and I'll
7 take them with me. I think I have a pretty good hand
8 on it. I just want to make sure I've got all the
9 information.

10 MR. ELLIS: Okay.

11 THE COURT: Any objection to me just taking them with
12 me --

13 MR. ELLIS: No, sir.

14 THE COURT: -- and reviewing them?

15 MR. HOLMES: They probably just ought to be marked as
16 an exhibit. That's the best thing if they were just marked
17 as exhibit in the record.

18 THE COURT: That will be fine.

19 MR. ELLIS: I'll be happy to do that and then what
20 I'll do is mark the -- I've got his deposition exhibits as
21 well.

22 MR. HOLMES: Judge, I don't have a problem with
23 putting the whole deposition in and just hand you the
24 designations. That's fine with me.

25 THE COURT: That's fine with me.

1 MR. ELLIS: Okay. Do you want me to just hand you up
2 the original?

3 MR. HOLMES: Sure.

4 MR. ELLIS: Not to hold everybody up, since I wasn't
5 planning on doing that, I'll be glad to do that just when
6 we're finished. I don't want to make y'all sit here while
7 I pull them out of the box.

8 THE COURT: That's fine. And, like I said, if you've
9 got something you want to send me in the next day or two,
10 I'm gonna be out of town next week, so you've got a week to
11 reconsider and think about something and if you'd like to
12 send it on.

13 MR. ELLIS: Okay. I appreciate it.

14 Your Honor, that's the conclusion of the Plaintiff's
15 case, and it's our position in this -- just to -- just to
16 conclude on that end, we're not seeking breach of contract
17 and I'm not seeking judgment on promissory estoppel. What
18 I'm seeking a judgment on is a declaratory judgment. We
19 want a declaratory judgment that the statute provides that
20 the area we have been serving for a long period of time
21 with the understanding of Fountain Inn is our designated
22 service area under 5-7-60. And we would like to have the
23 Court order that that is our designated service area and
24 Fountain Inn can't come into it and an injunction against
25 their continuing to provide any services and including

1 relinquishing any contracts that they have at this time,
2 which I'll explain in a brief later that's consistent with
3 the case law.

4 THE COURT: Okay. All right. Yes, sir. Call your
5 next witness.

6 MR. HOLMES: Well, just to protect my position,
7 Judge, I heard what Mr. Ellis said, but to make absolutely
8 certain, I'm moving for a directed verdict on any claim
9 about a breach of contract and promissory estoppel. I
10 understand they may have waived it, but I didn't hear the
11 word "waiver". I just want to make sure the record's clear
12 that those causes of action are no longer a part of this
13 case. So for the sake of the record, I'm moving for a
14 directed verdict.

15 THE COURT: And those are out, right?

16 MR. ELLIS: Those are out.

17 THE COURT: All right. Those are officially out, and
18 just for the sake of the record, based upon stipulation of
19 the parties, those are abandoned.

20 MR. HOLMES: Thank you, Your Honor. I call Mike
21 Pitman to the stand.

22 THOMAS MICHAEL PITMAN,
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. HOLMES:

1 Q. State your full name for the record, please, sir.
2 A. Thomas Michael Pitman.
3 Q. And you're employed by the City of Fountain Inn?
4 A. That's correct.
5 Q. And what is your job?
6 A. I'm the gas manager.
7 Q. And how long have you been there?
8 A. December of 2006.
9 Q. 2006?
10 A. (Nods head.)
11 Q. Okay. You're gonna have to answer audibly so the
12 court reporter can get it down. Was that a "yes"?
13 A. Yes, sir.
14 Q. All right. How long have you been involved in the gas
15 -- natural gas business?
16 A. Since 1977, so thirty-eight years.
17 Q. All right. And are you familiar with the City Council
18 of the City of Fountain Inn?
19 A. I am.
20 Q. Okay. And they have four-year staggered terms?
21 A. That's correct.
22 Q. Now where does the City of Fountain Inn get its
23 natural gas?
24 A. Off of Transco, which is just north of the city of
25 Fountain Inn.

1 Q. All right. And where does the Transco pipeline start
2 and end?

3 A. It starts in South Texas and ends in New York City.
4 It's about a ten thousand plus mile pipeline and it
5 distributes about 9.0 BCF a day.

6 Q. Okay. You're gonna have to help us with BCF.

7 A. Okay. Building cubic feet. It's pretty significant.

8 Q. All right. And how many natural gas utilities get
9 their natural gas from the Transco pipeline near the city
10 of Fountain Inn?

11 A. At the city of Fountain Inn, it's Piedmont Natural
12 Gas, City of Laurens, and Fountain Inn. Just to the
13 northeast, Clinton Newberry gets their gas off of that
14 system.

15 Q. So there's a total of four natural gas utilities that
16 are the right out of the city of Fountain Inn?

17 A. That's correct.

18 Q. Okay. I'm going to show you what was marked as
19 Defendant's Exhibit 1 --

20 MR. HOLMES: And I would move that it be Defendant's

21 3.

22 MR. ELLIS: I think it is.

23 (Discussion off the record.)

24 MR. HOLMES: Judge, if there's not a problem, for
25 the sake of the record what is now marked as Defendant's

1 Exhibit Number 2 is a letter dated March 30, 2011. So to
2 make sure the record is clear, let's go ahead and mark that
3 the next available Defendant's exhibit number so that we
4 can go back to this large exhibit and mark it Number 2
5 because there's testimony referring to this as Exhibit 2.

6 THE COURT: Okay. And then we'll substitute -- for
7 her sake, substitute a smaller picture.

8 (Defendant's Exhibit Number 3, a map, was marked and
9 admitted into evidence.)

10 (Defendant's Exhibit Number 2, a 3/30/11 letter, was
11 remarked as Exhibit Number 4 and admitted into evidence.)

12 THE COURT: All right. Thank you.

13 BY MR. HOLMES:

14 Q. All right. Mr. Pitman, let me -- let me show you what
15 has now been marked as Defendant's Exhibit Number 3. It
16 shows a different distance between Laurens and this side;
17 is that correct?

18 A. That's correct.

19 Q. And how far is that?

20 MR. ELLIS: Your Honor, I'm gonna object just on
21 relevance grounds because the statute -- because of what
22 the statute says. That's my objection.

23 THE COURT: All right. Over your objection I'll allow
24 him because I'm gonna need as much as I can to get a feel
25 for this area.

1 BY MR. HOLMES:

2 Q. How far is the city of Laurens from the disputed area
3 that we've been talking about?

4 A. Fifteen miles.

5 Q. Okay. And the city of Fountain Inn?

6 A. Three.

7 Q. All right. And Fountain Inn, if it were -- when it
8 built the line -- did it build a line to Uniscite?

9 A. That's correct.

10 Q. And how far did it -- how far was that pipe?

11 A. About two miles.

12 Q. Okay. And let me now show you Defendant's Exhibit
13 Number 2, which shows the -- the territorial maps. Are you
14 familiar with this area in northern Laurens County?

15 A. I am.

16 Q. How was it improved or developed?

17 A. Most of the development lately, since March, has been
18 because of the ZF facility. The ZF facility is earmarked
19 to employ about 2,000 people, so the impact to Fountain Inn
20 has been increasing residential load into that whole area
21 of north Laurens County.

22 Q. All right. And did the City of Fountain Inn submit a
23 bid to the ZF facility?

24 A. We were asked to submit a bid on February 22nd, I
25 believe.

1 Q. Who asked you to do that?

2 A. Ken Walsh with JLL.

3 Q. Who was that?

4 A. He was the consultant for -- that was building the
5 facility for ZF.

6 Q. All right. And since that time -- who manages or runs
7 the Owings Industrial Park?

8 A. ZF.

9 Q. ZF owns the park?

10 A. Oh, I'm sorry, not the park. Laurens County
11 Development Corporation runs the park.

12 Q. Okay. And has Fountain Inn been involved in
13 discussions with them?

14 A. Numerous discussions. They've asked us to run a pipe
15 into the Phase II of the development of the park as well.

16 Q. Okay. So as far as you know, the City of Fountain Inn
17 is there with the permission of the property?

18 A. That's correct.

19 MR. ELLIS: Objection; relevance.

20 THE COURT: All right.

21 BY MR. HOLMES:

22 Q. Now has the City of Fountain Inn invested money to
23 build its system and to be able to supply natural gas in
24 this area?

25 A. That's correct.

1 Q. Did you make an attempt prior to submitting a bid to
2 ZF to determine whether or not there was any contract of
3 any kind with Laurens Commission of Public Works and the
4 City of Fountain Inn?

5 A. I did.

6 Q. What were you able to determine?

7 A. That there was not one and we could not bid on it as
8 well as anybody else.

9 Q. All right. And did you look through all the records
10 that the City had?

11 A. I did.

12 Q. Outside of the recent development that's taken place,
13 that is the industrial development in Owings Industrial
14 Park, has there been any other development of any
15 significance in this area of Laurens County?

16 A. There has not.

17 Q. Okay. In fact, if you were looking at Google Earth
18 map today you'd see that; is that correct?

19 A. That's correct.

20 Q. All right. Now you've heard some testimony about the
21 -- where Laurens is versus -- Laurens CPW versus this line
22 and on this map that is Defendant's Exhibit Number 2 there
23 are some purple bubbles or so forth. Do you see those?

24 A. I do.

25 Q. All right. And what do those indicate?

1 A. They indicate customers that Laurens CPW is serving in
2 that area.

3 Q. All right. That would be on the Fountain Inn side of
4 the line?

5 A. They would be on the purported north side of that
6 territorial boundary which is to be served by the City of
7 Fountain Inn.

8 Q. Okay. And you've heard some testimony about a large
9 industrial customer, the plastic -- I'm drawing a blank.

10 MR. ELLIS: Dispozó.

11 Q. Dispozó. Is that -- do you know where that is in
12 relationship to this line?

13 A. That would also be in the Fountain Inn territory.

14 Q. Okay. So from your point, from what you've seen, has
15 Laurens abided by this line?

16 A. They have not.

17 Q. Okay. Now does Fountain Inn have the capacity to
18 provide natural gas in this area?

19 A. Yes, they do.

20 Q. Is it actually doing that now?

21 A. That's correct.

22 Q. Will it be able to continue to do that in the future?

23 A. Yes, they will.

24 Q. Okay. Is it important, particularly for an industrial
25 park that Laurens County is trying to lure people to come

1 into, that there are two utility providers?

2 MR. ELLIS: Objection, Your Honor. Again, objection
3 to relevance. Again, this is a statute that says who can
4 serve in the area. It's not about having a discussion as
5 to who's closest to the line or whatever. It's about
6 whether there's a boundary there and whether or not the
7 statute means something, so I object on relevance.

8 MR. HOLMES: And, Judge, I would have agreed with
9 that, but we've gone into a lot of testimony and they
10 offered contracts and so forth, so we're well beyond that
11 at this point.

12 THE COURT: All right. Well, briefly I'll allow him
13 to. I mean, I understand the marketplace. So, I mean --
14 again, this comes down to the interpretation of the
15 statute, but I'll allow you to put as much foundation
16 within certain limits as you want to.

17 BY MR. HOLMES:

18 Q. Let me just ask you again, is there a benefit to
19 Laurens County, and this park in particular, that there's
20 more than one utility?

21 A. Any time you can increase competition it's a benefit
22 to the customer.

23 Q. In what way?

24 A. Pricing, reliability, dependability.

25 Q. All right. The Uniscite customer, did Laurens bid on

1 that?
2 A. They did.
3 Q. All right. Did Laurens and Fountain Inn both bid on
4 ZF?
5 A. They -- they did.
6 Q. All right. Did anybody else?
7 A. Clinton Newberry bid on it we were told.
8 Q. Okay. And Laurens ended up with that?
9 A. That's correct.
10 Q. Do you know if there's more than one electrical
11 provider in there?
12 A. There's Laurens Electric and Duke Energy in that area.
13 Q. Okay. Have you -- well, withdrawn. Are you aware of
14 whether the PSC provides any kind of territorial boundaries
15 at all?
16 A. They do not.
17 Q. All right. And the City of Fountain Inn, do you have
18 to compete with another? That is the City of Fountain Inn
19 with a another natural gas provider?
20 A. We do. We compete with Piedmont to the north of our
21 service territory.
22 Q. All right. And how is that resolved?
23 A. Typically whoever can get the developer or the
24 industrial or commercial customer to agree to service with
25 that provider is who gets it.

1 Q. Okay. That's similar to this situation with Owings
2 Industrial Park?

3 A. That's correct.

4 Q. Okay. Is either Fountain Inn Natural Gas or LCPW
5 regulated by the PSC, the Public Service Commission?

6 A. They're not.

7 Q. Okay.

8 MR. HOLMES: Judge, I don't think I have any other
9 questions of Mr. Pitman.

10 THE COURT: Okay.

11 MR. ELLIS: Your Honor, may I have just a moment?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. ELLIS:

15 Q. Mr. Pitman, prior to 2011 or prior to your coming to
16 the City of Fountain Inn in 2006, you're not aware of any
17 attempts by the City of Fountain Inn to run lines into the
18 territory claimed by the LCPW, are you?

19 A. I'm not.

20 Q. Okay. And actually before the -- before this lawsuit
21 happened, the City of Fountain Inn had not run lines into
22 this disputed territory to attempt to serve on that side of
23 the line, had they?

24 A. I think we have built lines down to serve customers
25 that requested our service.

1 Q. Okay. But do you know where they are?

2 A. I don't.

3 Q. Okay. You're not aware though of the deliberate
4 running of lines into this territory by Fountain Inn prior
5 to this dispute starting though, are you?

6 A. Again, we would run a line to serve a customer. We
7 would provide a spec line.

8 Q. No, I understand that, but here's my question. I want
9 you to tell me, if you know, because I -- let me go back.
10 I asked you on your deposition this question before. My
11 question is: Prior to 2011, are you aware of the location
12 of lines that the City of Fountain Inn ran into the
13 territory claimed by LCPW in order to serve customers?

14 A. No.

15 Q. Okay. Now you mentioned before competing with
16 Piedmont Natural Gas?

17 A. That's right.

18 Q. Piedmont Natural Gas is an investor-owned utility,
19 right?

20 A. They are.

21 Q. So they're regulated by the Public Service Commission,
22 correct?

23 A. That's correct.

24 Q. So they're not a municipality?

25 A. They're not.

1 Q. Okay. And you mentioned Laurens and Duke Energy.
2 They're -- they also have assigned territories from the
3 Public Service Commission, right?

4 A. The electric-generating entities are regulated.

5 Q. So you're not dealing with a situation wherein the
6 Public Service Commission -- I'm sorry. You're not dealing
7 with the situation where you have two municipalities
8 competing against each other?

9 A. No.

10 Q. Okay. As far as capacity goes, in order to be able to
11 come into Owings Industrial Park, the City of Fountain Inn
12 though actually did have to run a new line back into Owings
13 Park to do that, right?

14 A. They did.

15 Q. Okay. So you didn't have a line there before to
16 provide the service, but you ran a line in order to be able
17 to provide service; is that correct?

18 A. That's correct.

19 Q. And basically it's your position that the City of
20 Fountain Inn can go compete anywhere in this area that it
21 wants to, correct?

22 A. It's my position that if a customer requests our
23 service and it makes economic sense to do it, then we will
24 attempt do that.

25 Q. Okay. And I just want to clarify for the record, this

1 is what our dispute is, right? I just want to be sure
2 because we disagree about this. You do not believe that
3 the Laurens Commission of Public Works -- the City of
4 Laurens acting for the Commission of Public Works has a
5 designated service area that it can prevent you from
6 serving in, the City of Fountain, right?

7 A. I have never seen a contract or any formal agreement
8 that this is the Laurens CPW service territory, no.

9 Q. Okay. But you have seen a statute that says that a
10 city -- that tells a city the conditions under which it may
11 provide services outside of its city limits, right?

12 A. I'm not an attorney.

13 Q. Okay. But you are aware that there is a statute that
14 tells a city when it may provide services outside the city
15 limits, correct?

16 A. That's my understanding of what this argument is
17 about.

18 Q. Okay.

19 MR. ELLIS: I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. ELLIS: Nothing further, Your Honor.

22 MR. HOLMES: Just a couple.

23 REDIRECT EXAMINATION

24 BY MR. HOLMES:

25 Q. Mr. Pitman, you were asked about whether or not

1 the City of Fountain Inn had to build a line into the
2 industrial park to serve it?

3 A. Yes, sir.

4 Q. Do you remember that?

5 A. (Nods head.)

6 Q. Did Laurens have to do the same thing?

7 A. They had to build the line to connect to the facility,
8 yes.

9 Q. Okay.

10 MR. HOLMES: No other questions, Judge.

11 THE COURT: Thank you, sir. You can step down.

12 (Witness excused.)

13 MR. HOLMES: Defendant's case, Judge.

14 THE COURT: Okay. Anything in rebuttal?

15 MR. ELLIS: Your Honor, may I recall Dale real
16 briefly? Dale Satterfield real quickly?

17 THE COURT: Sure.

18 DALE SATTERFIELD,
19 having been previously sworn, testified as follows:

20 REBUTTAL EXAMINATION

21 BY MR. ELLIS:

22 Q. Mr. Satterfield, just by way of rebuttal, reference
23 was made to having to put in a line to serve ZF.

24 A. Yes, sir.

25 Q. Tell us what that line was.

1 A. Well, the line that we put in to service ZF was to
2 tap. The existing line was already there, the 6-inch high
3 pressure line, and we tapped that line to put in the
4 regulator stations to serve ZF just like any other
5 customer.

6 Q. So this wasn't putting in a whole new big feeder line?

7 A. No, sir. Just a couple of days.

8 MR. ELLIS: Okay. I don't think I have anything
9 further.

10 SURREBUTTAL EXAMINATION

11 BY MR. HOLMES:

12 Q. Mr. Satterfield, the line that Fountain Inn built was
13 the same way. They put in a tap and ran a line, right?

14 A. I'm not familiar with Fountain Inn's system.

15 Q. But you admit that the 6-inch -- this 6-inch line is
16 here. You had to run -- put a tap in and run a line to get
17 it in here, didn't you? Or did you run it from over here
18 and get it in there?

19 A. The tap we put in is on Stoddard Mill Road.

20 Q. Okay. But you had to get the gas from Stoddard Mill
21 Road to ZF, didn't you?

22 A. Through a service line.

23 Q. And you built that service line?

24 A. Yes, sir.

25 Q. Okay. And Fountain Inn built a service line?

1 A. No, sir. They laid a main line down Laurens Road.

2 MR. HOLMES: I don't have any other questions, Judge.

3 THE COURT: All right. You can step down.

4 (Witness excused.)

5 THE COURT: All right. What I need y'all to do is --
6 you've got cases that you think apply?

7 MR. ELLIS: Yes, Your Honor.

8 THE COURT: Can y'all get those to me and while I'm
9 on vacation next week with my wife, I'll sit down and read
10 through it. I mean, I've got the statute. You know, one
11 thing I'm kind of curious about is, is these areas of
12 service. There's no agreement as to what the area of
13 service is. In other words, if Laurens goes in and starts
14 serving an area, is it your position under the statute that
15 that then becomes their service area?

16 MR. ELLIS: If they're the first ones there, then,
17 yes, they are.

18 THE COURT: All right.

19 MR. ELLIS: If they put in the facilities to provide
20 the service, they have the capacity to provide the service
21 and actually serve it, then, yes, that's right.

22 THE COURT: And that's to the exclusion of anyone else
23 that wanted to come in and serve?

24 MR. ELLIS: That is the exclusion -- to the exclusion
25 of any other municipality who wants to come in and serve.

1 THE COURT: Okay.

2 MR. ELLIS: Or political subdivision.

3 THE COURT: Right.

4 MR. ELLIS: It does not exclude --

5 THE COURT: Right, private companies.

6 MR. ELLIS: I can't say that the statute applies in
7 ways that the statute doesn't say is what I would say.

8 THE COURT: But any political subdivision is
9 prohibited from entering that area to provide the services
10 that that service organization --

11 MR. ELLIS: That's correct. And as I say, this is
12 the same -- this is the same statute that allows a
13 municipality to provide fire service outside of its area,
14 so it's exclusive service. And it makes a lot of sense,
15 as I think our witness testified who's the engineer, that
16 with natural gas, with fire service, that you would say to
17 a municipality you can't go into an area that's already
18 got that type -- that service there, and that's what we
19 believe that section says.

20 My -- my colleague here is after me about not moving
21 for a directed verdict and I would move for a directed
22 verdict --

23 THE COURT: I'm assuming for the purposes of today's
24 trial that both parties move for directed verdicts, they're
25 both denied, you're protected for the record, and you've

1 incorporated all your arguments therein.

2 MR. ELLIS: Yes.

3 MR. HOLMES: Judge, you know, you always worry about
4 not having something to say when somebody speaks, but we
5 have cases, and I will get you ours, but, again, the
6 position that we take is simply that this is not in an area
7 that Laurens CPW governs. It's not an area that the City
8 of Fountain Inn governs.

9 THE COURT: Well, what about -- what about their
10 position? The statute says if you get there first and
11 you're a political subdivision or a department thereof,
12 then it's yours. I mean, it's kind of like the Oklahoma
13 land rush. You just sort of go out and you start
14 furnishing -- you spend money obviously, you run pipes
15 and you put in various infrastructure, and once you do
16 that their position is another political subdivision can't
17 come compete with you.

18 MR. HOLMES: Well, I understand that they're painting
19 with a very broad brush, but the cases I don't believe hold
20 that.

21 THE COURT: Okay. And that's what I want to look at.

22 MR. ELLIS: Right. And that's not where our dispute
23 is because I think the cases do hold that. The Supreme
24 Court has addressed this type of issue several times and
25 has said well, look, here's what we think it says. Well,

1 look, if you have a service area and you're putting down --
2 you're providing the service, that is your service area.
3 And one other thing I would say, too, is this system
4 actually works remarkably well. We haven't had a dispute
5 about this until 2011 and I think most of the time what
6 happens with these municipalities or political subdivisions
7 is they work it out. They find some way to get together on
8 it, but that's where our divide is.

9 THE COURT: Well, I'll tell you and, just off the
10 cuff, where I see that statute having creating a problem
11 in the future is with the increase in technology. I mean,
12 what if you are a cell phone company and you build a
13 tower and you broadcast out to an area and -- I mean, I
14 understand that that's a private company, but let's say
15 that, you know, the Laurens County Public Works builds
16 some sort of cell phone. Well, I mean there's got to be
17 some limit to the amount of physical territory you can
18 encompass.

19 MR. ELLIS: Well, what you can't do is, first of all,
20 you can't go into another municipality. You can't go onto
21 -- and, again, we're talking about municipalities.

22 THE COURT: Yeah, I know. I understand that. And
23 when I say these examples, I'm assuming they're
24 municipalities and not private companies.

25 MR. ELLIS: Right. The interesting thing is I think

1 that's something the Legislature can remedy when the time
2 comes with respect to cell phones or technology because I
3 understand what you mean. And also this is -- this is an
4 issue when you're analyzing this statute and you look at
5 these questions and are like well, okay, does this mean
6 it goes on forever, does this mean we can go all the way
7 to Charleston? Well, part of the deal is in a lot of
8 situations these services are already going to be provided,
9 so it's not unlimited, but I think what it does do is
10 provide a good means for a municipality to be incentivized
11 to provide services outside of their city limits and
12 rewards them for that and you also avoid a problem with
13 overlapping services, which is a problem, so.

14 THE COURT: Right, which would created the dreaded
15 competition and driving the prices down, overlapping
16 services.

17 MR. ELLIS: Well, I was going to say --

18 THE COURT: I'm being facetious.

19 MR. ELLIS: I know what you mean, but, like I said,
20 fire service is a good example of where sometimes you've
21 got to look at it and say as far as municipalities are
22 concerned, this is what the Legislature decided to do.

23 THE COURT: Well, that's because they do it best and
24 that's the issue.

25 Okay. Y'all send me anything you've got. Trust me.

1 I cannot get to this -- we've got that mandatory meeting
2 next week, it's a Thursday. I have some duties I have to
3 take care of with my elderly parents. I'm not gonna get
4 to this until the next Monday, so I hope you're not in any
5 hurry. So don't panic.

6 **MR. HOLMES:** What I was gonna ask, Judge, because I
7 know what my schedule is, and I don't want to do this
8 half-baked, if we have ten days to get you the memorandums,
9 does that work?

10 **THE COURT:** That's fine. You can have ten days or
11 you can have fourteen if you want. I'm just telling you I
12 won't be here -- where am I the week after I get back from
13 that meeting? Fourteen might be fine.

14 (Discussion off the record.)

15 **THE COURT:** Send them to me. And, you know, I'm
16 assuming y'all have explored every opportunity to resolve
17 this matter.

18 **MR. HOLMES:** Actually we haven't, but I'm not --

19 **THE COURT:** The only thing I'll tell you is Judge
20 Barry Noble, a family court judge, who I think was
21 brilliant, used to tell people who were fighting over
22 children in custody cases, he would say, you know, y'all
23 know what's best for your children and I wish you'd resolve
24 it, but once you let me resolve it, neither one of you are
25 gonna like it, and that would settle more cases if parents

1 would go out and -- I'm not saying neither one of you are
2 gonna like it, but I will -- you know, if there's some way
3 to resolve it, y'all know how to resolve it better than I
4 do, but I'll do my job. Thank you, y'all.

5 MR. HOLMES: Thank you.

6 MR. ELLIS: We appreciate it.

7 (Proceedings concluded at 3:46 PM.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete transcript of record of all the
proceedings had and the evidence introduced in the hearing
of the captioned case in Circuit Court on the 20th day of
March, 2014.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

September 10, 2015

Stacy S. Johnson
Stacy S. Johnson, RPR
Circuit Court Reporter



1000 N. Main Street
Fountain Inn, South Carolina 29644
Phone: 803-681-1111

1000 N. Main Street
Fountain Inn, South Carolina 29644

1000 N. Main Street
Fountain Inn, South Carolina 29644
Phone: 803-681-1111
Fax: 803-681-1112
E-mail: info@cpw.org

November 11, 1992

Mr. Carey Elliott
Town of Fountain Inn
200 North Main Street
Fountain Inn, South Carolina 29644

Re: Territorial Boundary

Dear Mr. Elliott:

Enclosed is a map on which I have located the proposed location of the territorial boundary between our gas systems. I believe that it reflects our conversation and discussion which was held in this office on October 27, 1992.

I look forward to your comments.

Sincerely,

Coleman F. Smoak, Jr.

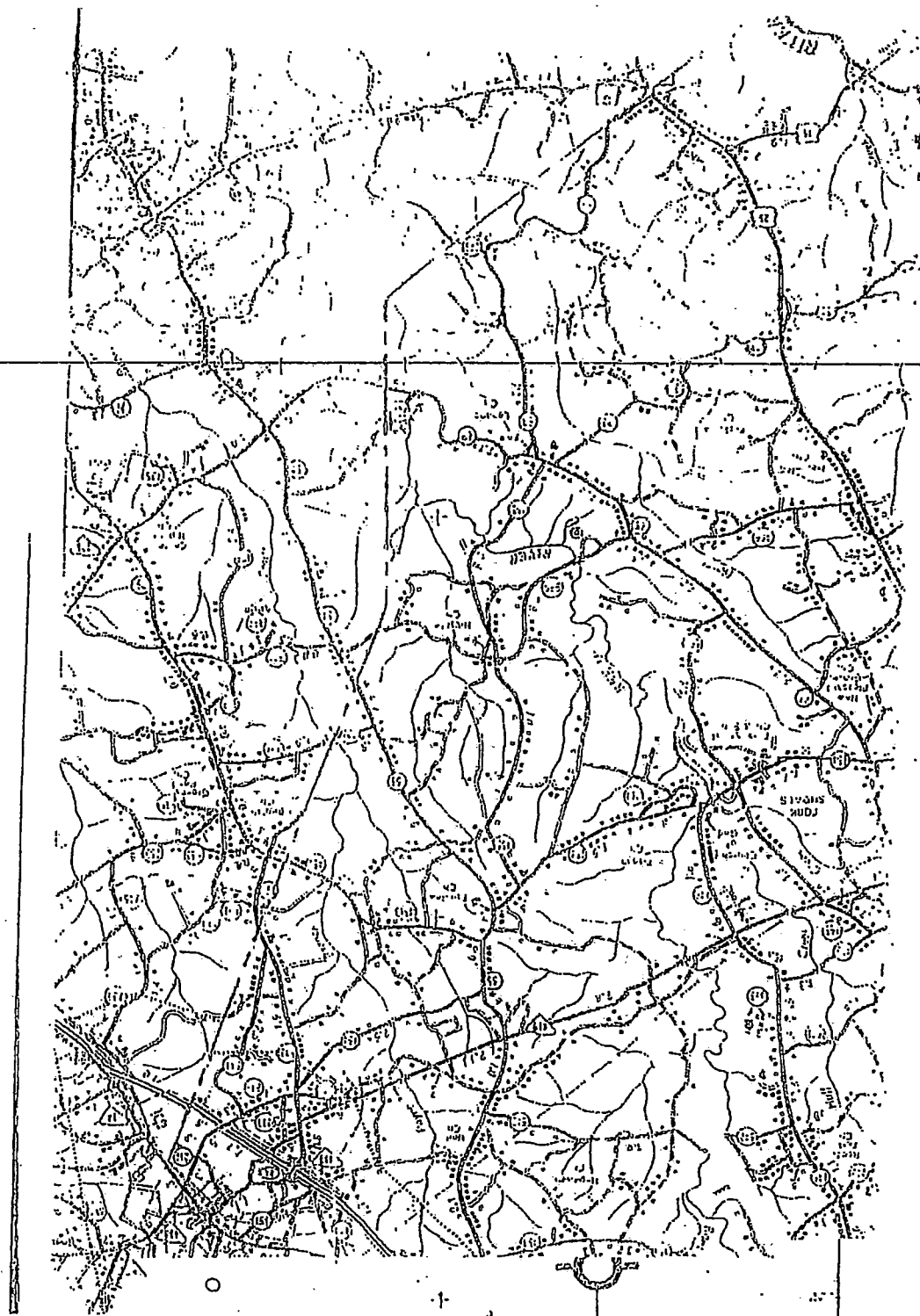
Coleman F. Smoak, Jr.
General Manager

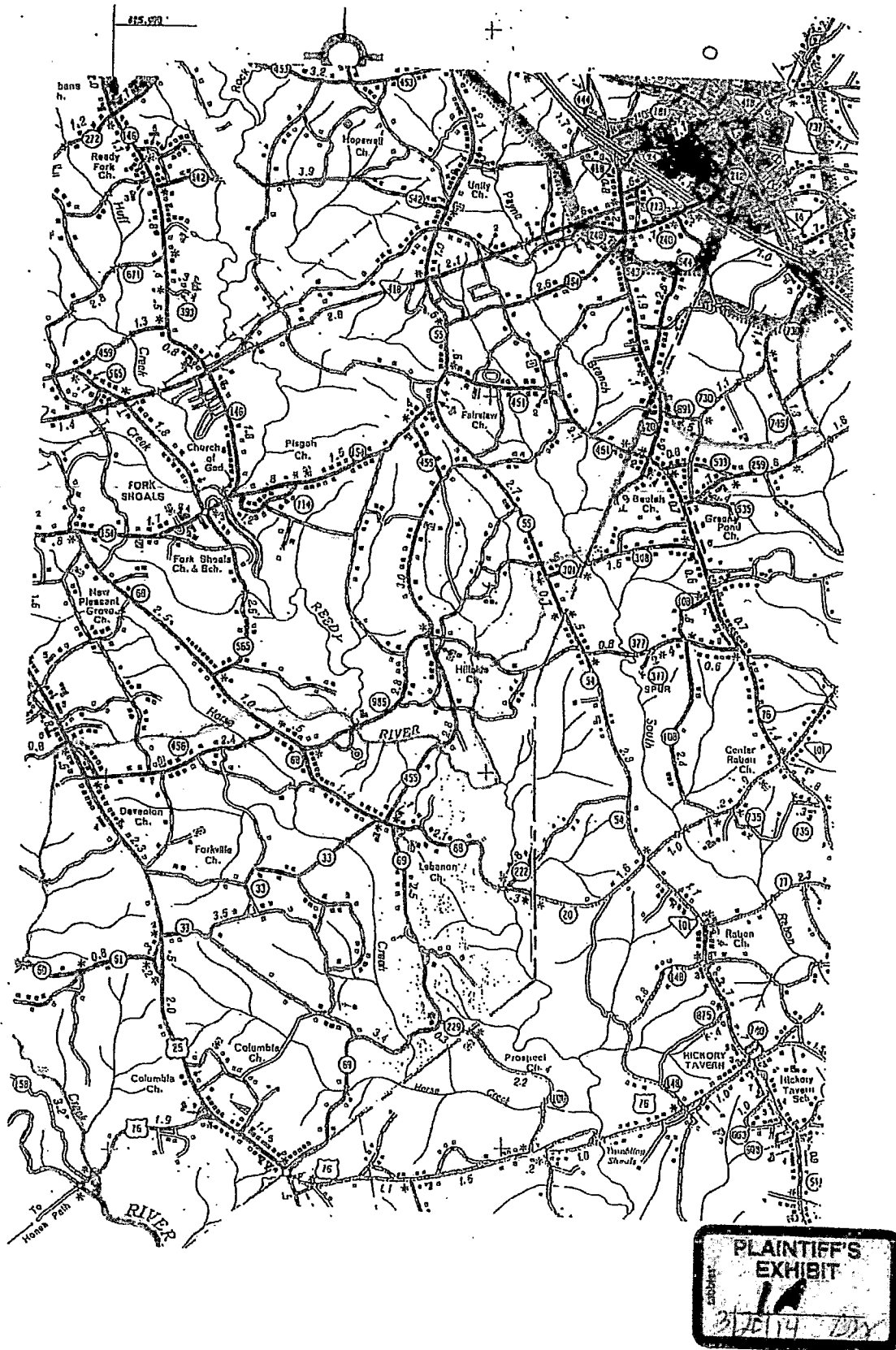
CFSjr/jhj

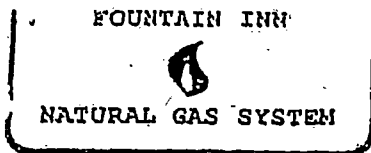
Enclosure

cc: Mr. Scott Heath, w/enc.









Fountain Inn Natural Gas System

November 17, 1992

Carey E. Elliott, Systems Manager

A.W. Moore, Superintendent

Deborah M. Jacobson, Accounts Supervisor

Mr. Coleman F. Smoak, Jr.
General Manager
Commission of Public Works
P.O. Box 349
Laurens, SC 29360-0349

~~Re: Territorial Boundary for Natural Gas Systems~~

Dear Coleman:

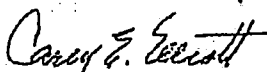
This letter is in reply to our meeting of October 27, 1992, regarding the establishment of territorial boundary for our natural gas systems.

The boundary map mailed to us on November 11, 1992, does reflect our previous conversation and is in agreement with the Fountain Inn City Council.

However, as discussed, the Fountain Inn Natural Gas System expects the privilege of serving customers within our city limits. This includes future areas of annexation.

Thank you for your spirit of cooperation in this matter.

Sincerely,

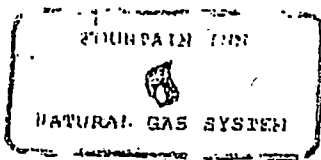

Carey E. Elliott
System Manager

CEE/krc

xc: Mayor Ben Davis
Sam Moore
Berry Woods, Jr.

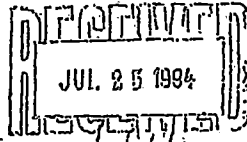
200 North Main Street • Fountain Inn, S.C. 29644
(803) 882-4421/4422 • FAX # (803) 882-5637





July 22, 1994

Fountain Inc. Natural Gas System



Mr. Coleman F. Smoak, Jr.
General Manager
Commissioner of Public Works
P.O. Box 349
Laurens, SC 29360-0349

Re: Territorial Boundary of Natural Gas Systems

Dear Coleman:

This letter is to ask your compliance with our service area agreement of November 11, 1992.

~~I have been informed that Laurens CPW has recently provided gas service via farm tap from your high pressure line to a new residence near the corner of Andrews Road and Greenpond Road.~~

We realize that this is not an intentional violation of our agreement. We would, however, appreciate your consideration in this regard.

Sincerely,

Carey E. Elliott
System Manager

CEE/krc

cc: Mayor Ben Davis
Sam Moore

200 North Main Street • Fountain Inc., S.C. 29641
(803) 862-4421/1122 FAX / (803) 862-4421





212 CHURCH STREET
POST OFFICE BOX 319
LAURENS, SOUTH CAROLINA 29350-0319

(803) 934-0451
FAX (803) 934-5355

COMMISSIONERS
MARSHALL W. ABERCROMBIE
ULYSSES CUNNINGHAM
THOMAS K. HAROY
CARY P. MOORE
VALLIE B. PAGEH

August 15, 1994

Mr. Carey E. Elliott
System Manager
Fountain Inn Natural Gas System
200 North Main Street
Fountain Inn, South Carolina 29644

Re: Territorial Boundary for
Natural Gas

Dear Carey:

It is our understanding that the section of Greenpond Rd. (S-543) from S-154 to the County Line was to be handled differently from the boundary shown in our agreement. You will remember that, during our first conversations in 1985, Mayor Gault indicated that you had no intention of serving south of S-154; subsequently, he stated that he had meant that Fountain Inn would not serve across the County Line.

Because of this "misunderstanding", we indicated in our latest discussions with you that we would agree to the boundary included with my letter of November 11, 1992, but that, with regard to S-543 (between S-154 and the County Line) we would serve if requested. However, we agreed that we would not actively pursue customers along this road section and that we would not expand to other roads off of this section.

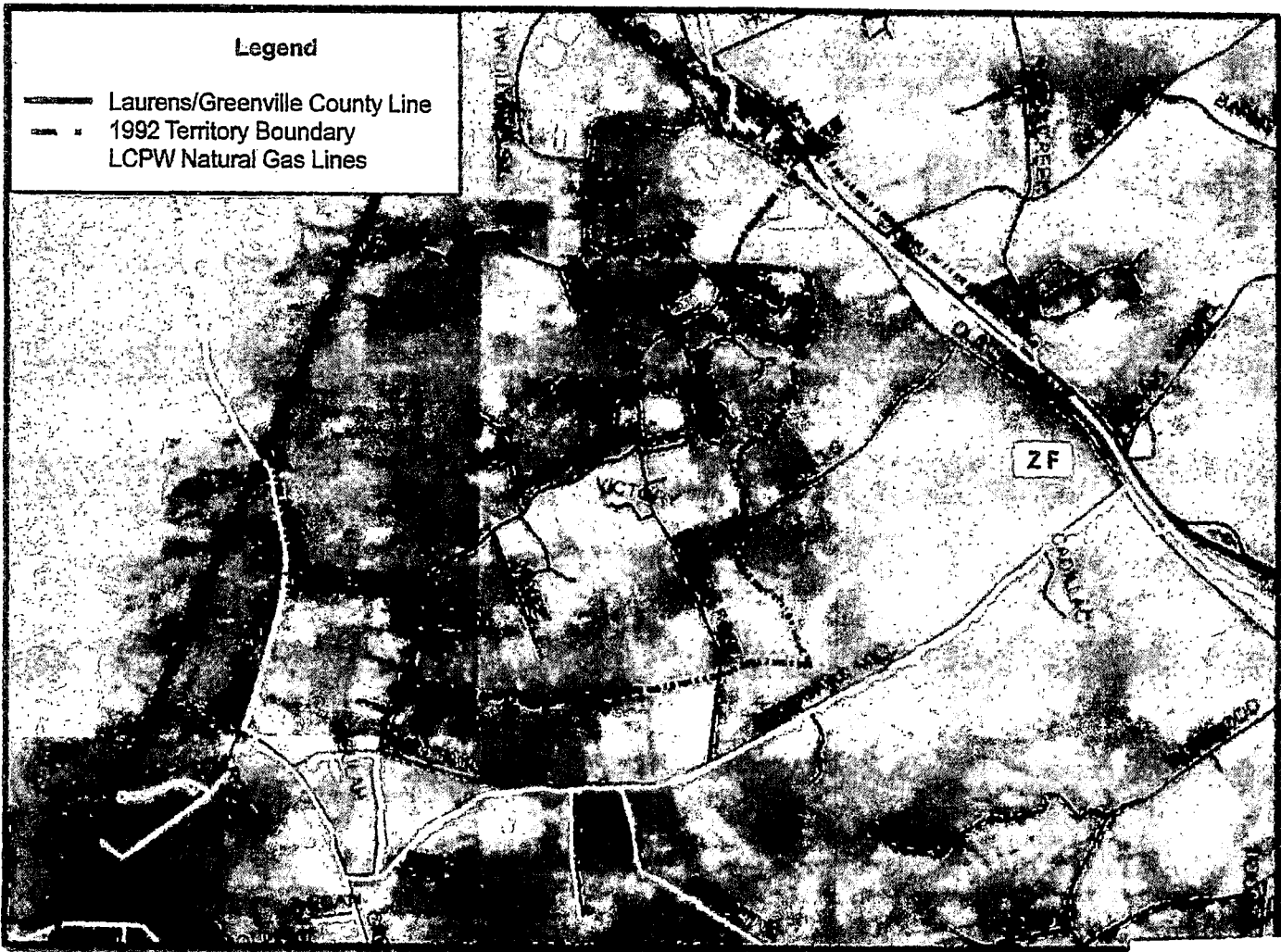
As stated in your letter, we have not intentionally violated our agreement and in fact do not believe that it has been violated.

Sincerely,

Coleman F. Smoak, Jr.
General Manager

CFSjr/jhj





NATURAL GAS SALES
BETWEEN
LAURENS COMMISSION OF PUBLIC WORKS
AND ZF TRANSMISSIONS, INC.

This Natural Gas Sales Agreement ("Agreement") made and entered into this ____ day of _____, 2011, by and between Laurens CPW, its successors and assigns, hereinafter called "LCPW" and ZF Transmissions, its successors and assigns, hereinafter called "Customer."

WITNESSETH:

WHEREAS, LCPW owns and operates a natural gas pipeline system in South Carolina, which in addition supplies natural gas for residential, commercial and industrial, firm and interruptible, and,

WHEREAS, LCPW owns facility to accept natural gas delivered into South Carolina from Transcontinental Gas Pipeline Corporation ("Transco"), and

WHEREAS, Customer has requested that the LCPW deliver a daily Firm volume of up to 1430 dekatherms of natural gas, delivered through LCPW's facility, for delivery to Customer to the delivery point(s) as stated in this agreement, and,

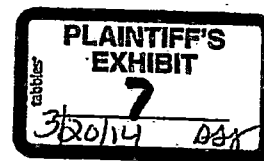
WHEREAS, This Natural Gas Sales Agreement shall run from March 4, 2011 to March 4, 2016, and shall be self-renewing unless either party gives sixty (60) days written notice of their intent to terminate.

WHEREAS, the Cost of Service provision within this contract will be evaluated by both the LCPW and by Customer prior to extending the contract past the primary term.

SCOPE OF DELIVERY

Customer agrees that the Natural Gas Sales Agreement service is provided on a Firm basis. However, the Customer retains the explicit right to adjust and portion the required gas load delivered to include a mix of Firm and Interruptible delivery as to maximize savings on natural gas delivered. The LCPW agrees to establish Dual-feed capabilities so as to enhance service reliability to ZF Industries. The Laurens CPW agrees to furnish metering capabilities as to allow real-time burn data via network connection. Furthermore, the LCPW agrees to install all natural gas service infrastructures at no cost to ZF Transmissions, Inc.

1 of 4



Confidential . . . Confidential . . . Confidential . . . Confidential . . . Confidential . . . Confidential

DEFINITIONS

As listed in this Agreement:

"Natural Gas Sales Agreement" means the LCPW's receipt of natural gas at the LCPW's interconnect with Transco and deliver on a firm and/or interruptible basis to the Customer's meter station(s).

"Transco" means Transcontinental Gas Pipe Line Company

"Manager" means the General Manager of the LCPW.

"Demand Rate" to be paid to LCPW is equal to \$0.40 per dekatherm per day for the contract period.

"Natural Gas Sales Agreement Rate" is equal to forty cents (\$0.40) per dekatherm each day for all natural gas delivered by LCPW.

"Month" the term month, as used in this agreement, means the period intervening between meter readings for the purposes of monthly billing, such readings being taken once a month.

"Delivery Point(s)" refers to the meter station(s) owned by the LCPW and located at or on the properties of ZF Transmission located at the Intersection of Old Laurens Rd and Stoddard Mill Rd.

PRICING AND BILLING

The LCPW shall bill the Customer monthly, and the Customer shall pay the LCPW before or by the date due on the invoice. Interest shall accrue on accounts not paid when due at a rate of five percent of the total bill. The bill shall include the following charges:

A monthly Customer Charge equal to \$225.00; plus

A daily Demand Charge, computed by multiplying the customer's Firm MDQ by the Demand Rate, which is \$0.40 per Dekatherm; plus

A Distribution Charge for the gas delivered to the customer during the Usage Month, computed by multiplying the Dekatherms of gas delivered to the customer during the Usage Month by the Delivery Charge of \$0.40; plus

A Purchased Gas Cost ("PGC") charge established in accordance with the PGC Rate Schedule as chosen by Customer to include either:

- Market Price
- Fixed Pricing to include Monthly Pricing, Futures Strip Pricing, etc.
- LCPW WACOG

2 of 4

Confidential ... Confidential ... Confidential ... Confidential ... Confidential ... Confidential

HEATING VALUE AND MEASUREMENT BASE

Gas shall be delivered with a heat content of approximately 1000 Btu per cubic foot. The LCPW agrees to deliver natural gas to Customer at 5 pounds per square inch. Natural Gas delivery shall be corrected relating to pressure and volume relationships as to assure metering accuracy. The LCPW will guarantee delivery pressure of no more than 7 pounds per square inch unless otherwise instructed by Customer.

FORCE MAJEURE

The LCPW shall not be deemed to have failed in its obligation to deliver gas to Customer if such failure is due to force majeure or any event beyond the LCPW's control. Including, but not limited to, acts of God, breakage or failure of pipeline, equipment, or failure of a supplier or transporter to deliver gas to the LCPW.

3 of 4

Confidential ... Confidential ... Confidential ... Confidential ... Confidential ... Confidential

NOTICES

All correspondence required under this Agreement is to be addressed as follows:

To LCPW: Irvin D. Satterfield
 Laurens Commission of Public Works
 P.O. Box 349
 Laurens, SC 29360
 Direct: 864-681-4329

To Customer

IN WITNESS WHEREOF, this Agreement has been executed on date first above written by the parties hereto by their officers or other authorized representative.

Customer _____

[Signature]
 LCPW

By _____

[Signature]
 By

Title _____

[Signature]
 Title

Witness _____

[Signature]
 Witness

Date _____

[Signature]
 Date

1 of 4

Confidential ... Confidential ... Confidential ... Confidential ... Confidential ... Confidential

NOTICES

All correspondence required under this Agreement is to be addressed as follows:

To LCPW: Irvin D. Satterfield
Laurens Commission of Public Works
P.O. Box 349
Laurens, SC 29360
864-681-4329

To Customer: ZF Transmissions Greenville, LLC
Controlling Department
2846 N. Old Laurens Rd.
Gray Court, SC 29645

IN WITNESS WHEREOF, this Agreement has been executed on date first above written by the parties hereto by their officers or other authorized representative.

Customer

LCPW

By

By

Title

Title

Witness

Witness

Date

Date

4 of 4

Confidential... Confidential... Confidential... Confidential... Confidential... Confidential

RESOLUTION NO. 11-03

RESOLUTION OF THE COMMISSION OF PUBLIC WORKS
OF THE CITY OF LAURENS, SOUTH CAROLINA

(Designated Service Area)

WHEREAS, the Board of Commissioners of the Commission of Public Works (the "Commission") of the City of Laurens, South Carolina (the "City"), is empowered to purchase, build or contract for building any waterworks, electric system, gas system and sanitary sewerage system and may operate and have the full and exclusive control and management of such systems. The waterworks, electric system, gas system and sanitary sewerage system have heretofore been combined into a single system known as the Combined Utility System (the "System"); and

WHEREAS, the Commission is adopting this Resolution in order identify certain areas ~~located in Laurens County, South Carolina (the "County") and outside the corporate limits of the~~ City as the "designated service area" of the Commission (within the meaning of S.C. Code Ann. § 5-7-60) for the purpose of furnishing or providing natural gas services of the System; and

WHEREAS, the Board of Commissioners has determined that it is in the best interest of the Commission to make the following certifications in order to ratify and confirm such designated service area.

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF LAURENS, SOUTH CAROLINA, as follows:

Section 1. The Commission hereby certifies as follows:

a. The Commission currently provides natural gas service to the areas located in the County and outside the corporate limits of the City identified in the correspondence attached hereto as Exhibit A and incorporated herein by reference (the "Natural Gas Designated Service Area"), and has provided such natural gas service to the Natural Gas Designated Service Area continuously since 1985.

b. The Commission has budgeted to provide natural gas service to the Natural Gas Designated Service Area.

c. The Commission has applied funds of the System in order to provide natural gas service to the Natural Gas Designated Service Area.

Section 2. The Chairman of the Commission and the General Manager of the Commission are each authorized, if necessary, to make any further certifications or take any actions as may be necessary in order to designate the Natural Gas Designated Service Area as a



"designated service area" for the provision of natural gas services by the Commission within the meaning of S.C. Code Ann. § 5-7-60.

Section 3. This Resolution, and the certification set forth in Section 1 above, shall be binding on the Board of Commissioners of Public Works of the City of Laurens, South Carolina, and its successors.

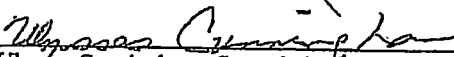
[Signature page follows]

This Resolution shall be binding on the Commissioners of Public Works of the City of Laurens, South Carolina, and its successors.

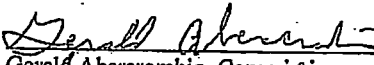
Adopted this 30th day of March, 2011.

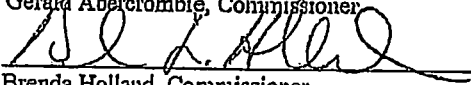
COMMISSIONERS OF PUBLIC WORKS OF
THE CITY OF LAURENS, SOUTH CAROLINA


Thomas K. Hardy, Chairman


Ulysses Cunningham, Commissioner


C. Parker Moore, Jr., Commissioner


Gerald Abercrombie, Commissioner


Brenda Holland, Commissioner

ATTEST:


General Manager,
March 30, 2011

EXHIBIT A

[See attached pages]



... ..
... ..
... ..

... ..
... ..

... ..
... ..
... ..
... ..
... ..
... ..

November 11, 1992

Mr. Carey Elliott
~~Town of Fountain Inn~~
200 North Main Street
Fountain Inn, South Carolina 29644

Re: Territorial Boundary

Dear Mr. Elliott:

Enclosed is a map on which I have located the proposed location of the territorial boundary between our gas systems. I believe that it reflects our conversation and discussion which was held in this office on October 27, 1992.

I look forward to your comments.

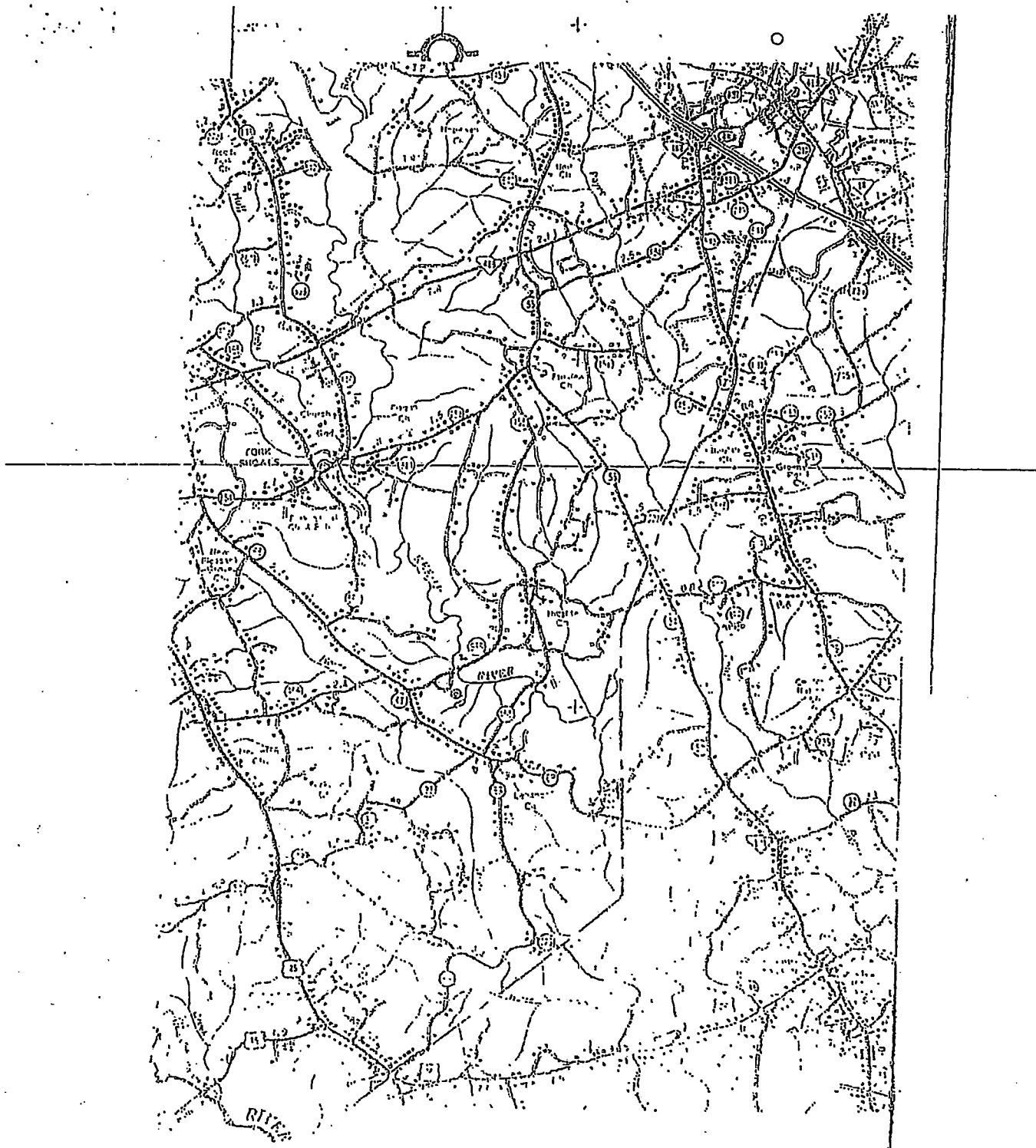
Sincerely,

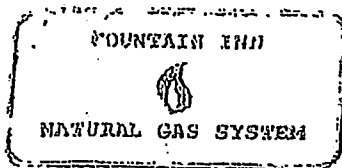
Coleman F. Smoak, Jr.
General Manager

CFSjr/jhj

Enclosure

cc: Mr. Scott Heath, w/enc.





Fountain Inn Natural Gas System

November 17, 1992

Carey E. Elliott, Systems Manager

A.W. Moore, Superintendent

Deborah M. Jackson, Accounts Supervisor

Mr. Coleman F. Smoak, Jr.
General Manager
Commission of Public Works
P.O. Box 349
Laurens, SC 29360-0349

Re: Territorial Boundary for Natural Gas Systems

Dear Coleman:

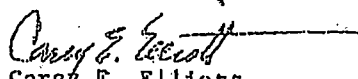
This letter is in reply to our meeting of October 27, 1992, regarding the establishment of territorial boundary for our natural gas systems.

The boundary map mailed to us on November 11, 1992, does reflect our previous conversation and is in agreement with the Fountain Inn City Council.

However, as discussed, the Fountain Inn Natural Gas System expects the privilege of serving customers within our city limits. This includes future areas of annexation.

Thank you for your spirit of cooperation in this matter.

Sincerely,

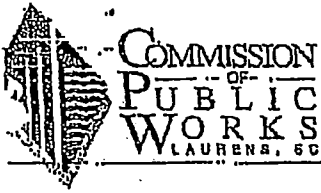

Carey E. Elliott
System Manager

CEE/krc

cc: Mayor Ben Davis
Sam Moore
Berry Woods, Jr.

200 North Main Street • Fountain Inn, S.C. 29644
1903 662 4271/4472 • FAX # 1903 662-5637





12 CHURCH STREET
DST OFFICE BOX 349
LAURENS, SOUTH CAROLINA 29550-0349

(803) 834-0461
FX (803) 834-6368

COMMISSIONERS
MARSHALL W. ADERCRUMBIE
LYBBS DUNNINGHAM
THOMAS K. HARDY
ARY P. MOORE
ILLIE B. PADEN

November 25, 1992

Mr. Carey E. Elliott
Fountain Inn Natural Gas System
200 N. Main St.
Fountain Inn, South Carolina 29644

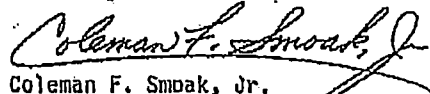
Re: Territorial Boundary for
Natural Gas

Dear Mr. Elliott:

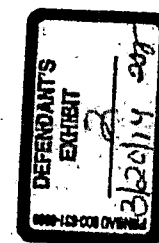
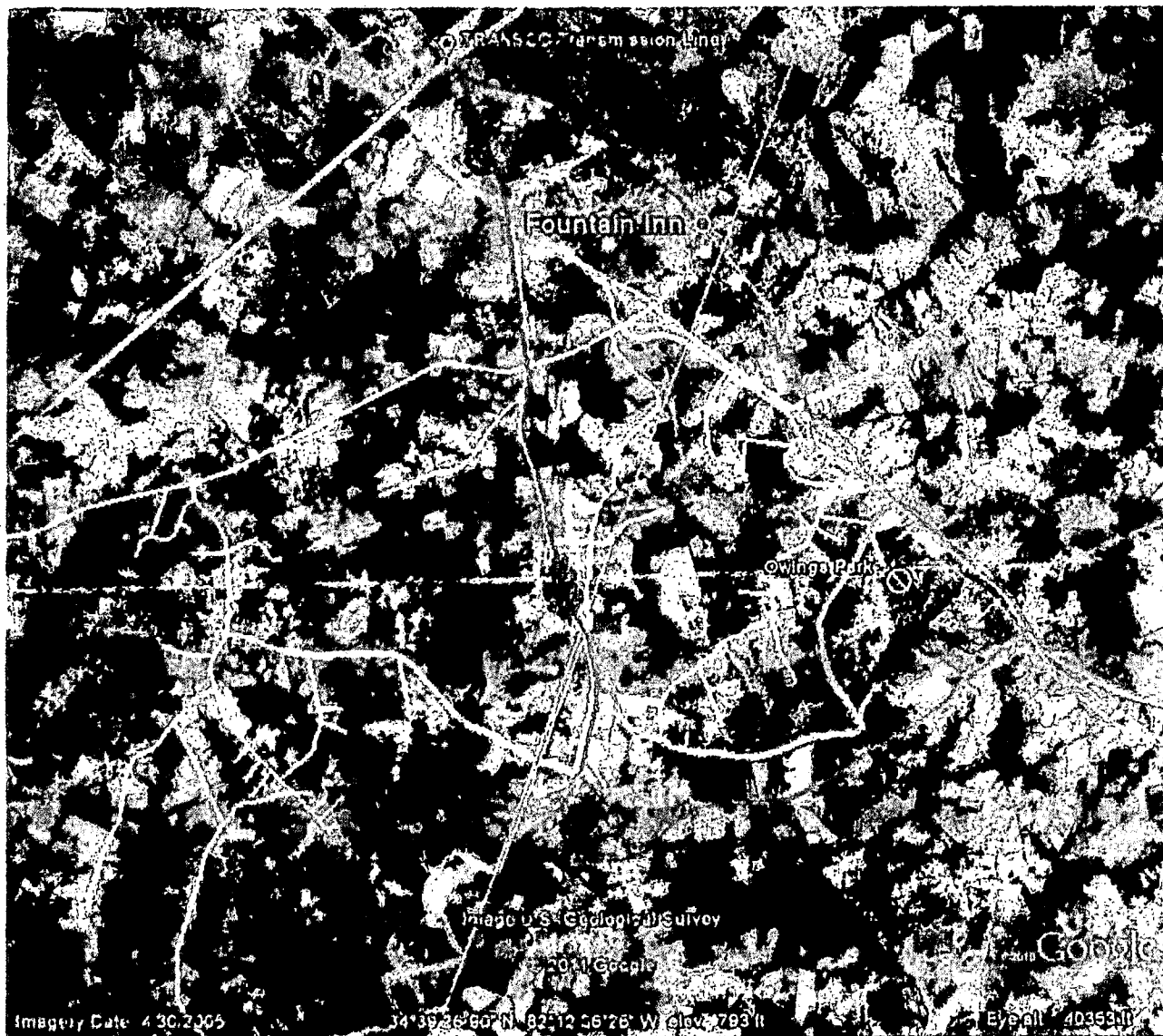
I am pleased to learn that the map I sent on October 27, 1992, reflects your understanding of the referenced boundary. I am in the process of preparing a resolution for adoption by both of our governing bodies.

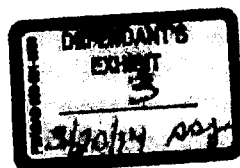
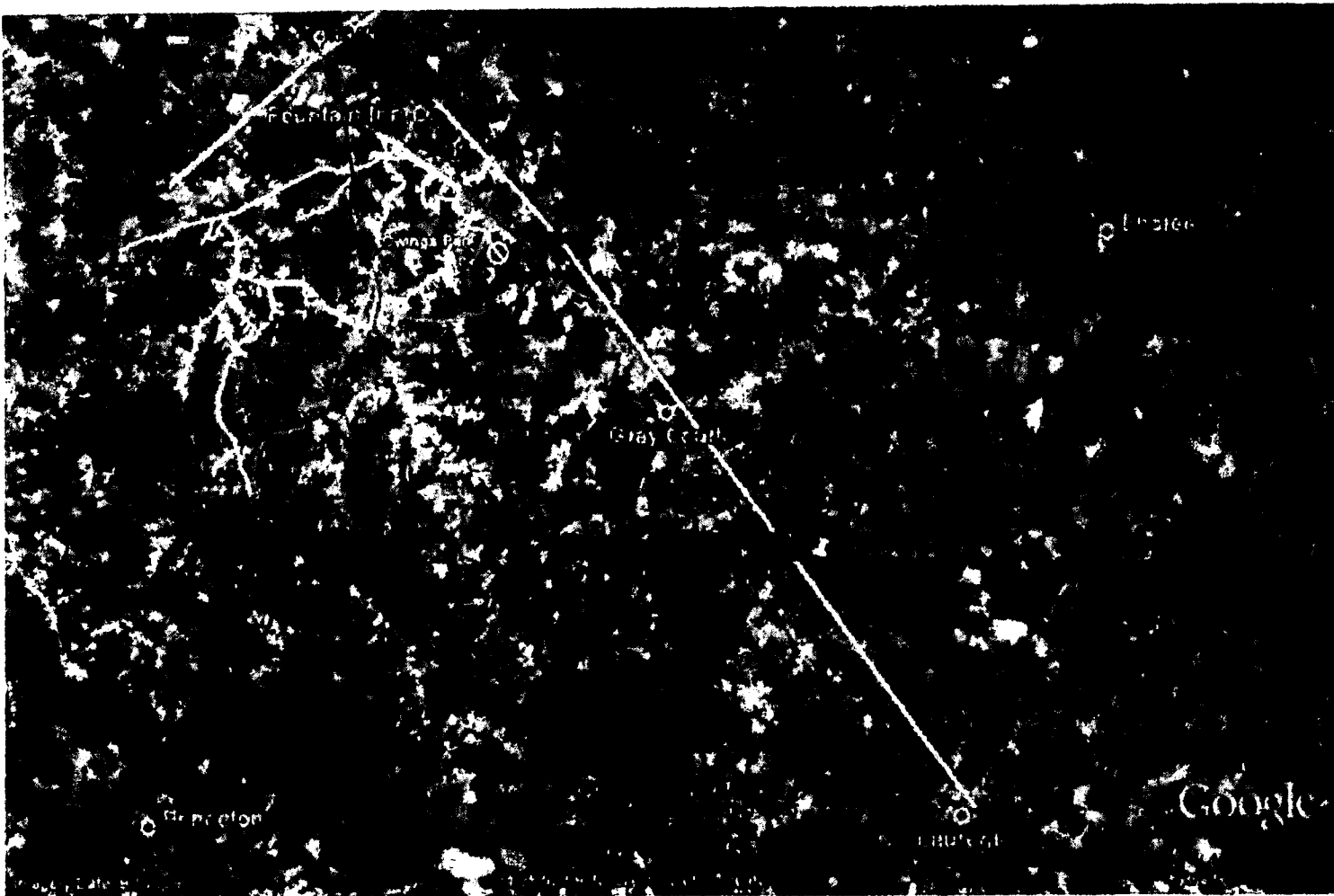
While I recognize the need to serve city services within city limits, I would appreciate your thoughts with regard to our existing customers which may be annexed.

Sincerely,


Coleman F. Smoak, Jr.
General Manager

CFSjr:jj







Reliable. Neighborly. Service.

212 CHURCH STREET
POST OFFICE BOX 349
LAURENS, SOUTH CAROLINA 29550-0349

(854) 681-4300
FAX (854) 681-4301
www.lcpw.com

March 30, 2011

Via E-Mail Transmission

Kenneth P. Walsh, Jr.
Vice President
Jones Lang Lasalle
6805 Morrison Boulevard, Suite 200
Charlotte, North Carolina 28211

Re: - Laurens Commission of Public Works
Natural Gas Service to ZF Transmission Manufacturing Facility

Dear Mr. Walsh:

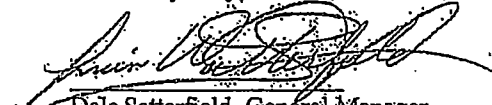
We want to make you and ZF Transmission aware of a certain legal action which the Laurens Commission of Public Works ("LCPW") has filed against the City of Fountain Inn, South Carolina. A copy of the Complaint which was filed on March 30, 2011 is enclosed. As you will note, LCPW has asserted its legal right to provide natural gas service to an area outside the City of Laurens corporate limits defined as its Natural Gas Designated Service Area under various legal grounds. Our intention is not to allow this litigation matter to delay the construction of the ZF Transmission Project.

As stated in our earlier proposal to you, we assure you that LCPW stands ready to provide natural gas service to ZF Transmission at the times and in the amounts required.

If additional information is needed or, if you or representatives of ZF Transmission should have any questions, please do not hesitate to contact me.

With kind regards,

Yours very truly,



Dale Satterfield, General Manager
Laurens Commission of Public Works

ELECTRICITY * NATURAL GAS * WATER ** SANITARY SEWER