

# EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HAMPTON )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Jessica S. Cook, et al., )  
 )  
Plaintiffs, )

Civil Action No. 2017-CP-25-00348

vs. )

**ORDER ON SANTEE COOPER'S  
MOTION FOR SPECIFIC  
PERFORMANCE AND/OR  
INJUNCTIVE RELIEF**

South Carolina Public Service Authority, )  
(also known as Santee Cooper), et al., )  
 )  
Defendants. )

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Background

SC Court of Appeals

The South Carolina Public Service Authority ("Santee Cooper") filed a Motion for Specific Performance and/or Injunctive Relief. In the motion, Santee Cooper seeks to prohibit South Carolina Electric & Gas Company, now known as Dominion Energy South Carolina, Inc., ("SCE&G") from proceeding with its attempt to hold Santee Cooper responsible for 45% of costs for Project "related" third party claims. In an October 21, 2019 letter from Dominion Senior Vice President and General Counsel Carlos Brown, attached as Exhibit A to Santee Cooper's motion, SCE&G identified the dispute between the parties for which SCE&G seeks recovery based on its interpretation of the Design and Construction Agreement ("DCA"). This civil action is listed as part of the dispute.

On November 13, 2019, this Court held a hearing on Santee Cooper's motion for specific performance and injunction. SCE&G and Santee Cooper were represented by counsel. The Court was informed at the hearing that SCE&G had actually proceeded to commence, with the AAA, the dispute identified and described by Carlos Brown in the aforementioned letter. This

Court grants the motion and enjoins SCE&G from proceeding with its dispute at this time, and until further order of this Court.

#### Analysis

Pursuant to the DCA, the parties have the right to go to court to seek equitable relief to, among other things, prevent the breach of provisions of the DCA. The Parties to the DCA agreed that injunctive relief and equitable remedies would be the province of the Courts. This Court has jurisdiction to consider whether it has jurisdiction, and determines it clearly does, pursuant to the DCA agreement, the Order of Chief Justice Beatty assigning this matter to the Court, and pursuant to other general statutory and inherent authority.

Santee Cooper argues that the dispute described in the Carlos Brown letter violates the intent of the DCA with respect to any duty on Santee Cooper to contribute to claims by third parties. See DCA Section 4.2. This section provides:

*4.2 Claims by Third Parties. The Parties shall bear responsibility in proportion to their Unit Ownership Interests for any claims brought by third parties **with respect to the services provided by SCE&G under this Agreement.***

(emphasis added).

Santee Cooper argues SC Code Ann. § 58-31-200 (1976) further controls the meaning of Section 4.2. That statute provides, in pertinent part:

§ 58-31-200. Joint ownership of nuclear electric generating station in Fairfield County.

....provided, further, that the Public Service Authority shall be severally liable, in proportion to its joint ownership interest in the plant and facilities, for the acts, omissions, or obligations performed, omitted, or incurred by the operator or other owners of the plant while acting as the designated agent of the Public Service Authority for purposes of constructing, operating, or maintaining the plant and facilities or any of them, but shall not otherwise be liable, jointly or severally, for the acts, omissions, or obligations of the operator or other owners of the plant; nor shall any money or property of the Public Service Authority be credited or otherwise applied to the account of the operator or other owners of the plant, or be

**charged with any debt, lien, or mortgage as a result of any debt or obligation of the operator or other owners of the plant.**

(emphasis added).

Santee Cooper argues the dispute set forth in the Carlos Brown letter (which has now been commenced in a AAA arbitration) violates DCA section 4.2 because the dispute described in the Carlos Brown letter is not of the nature contemplated by section 4.2 or the statute set forth above.

SCE&G invites the Court to consider the elements of a preliminary injunction and argues Santee Cooper cannot establish those elements. The Court disagrees with SCE&G. "To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). The Court finds these elements satisfied. While the Court is not ruling on a permanent injunction at this time, the Court agrees Santee Cooper has shown a likelihood of success on the merits, an inadequate remedy at law, and irreparable harm. The Court takes judicial notice that the dispute claimed by SCE&G threatens irreparable harm to Santee Cooper by its sheer mass, regardless of the fact that this Court finds it is unlikely to succeed on the merits, and the Court is well aware of the various other pending claims against Santee Cooper and its possible sale. There is no adequate remedy at law here. The parties are sophisticated commercial entities, the DCA relates to the building of a nuclear facility, and the parties agreed that either could come to Court and seek injunctive relief to prevent a DCA provision breach and that irreparable harm was admitted. Under such circumstances, an injunction and specific performance should be ordered.

Moreover, pursuant to Rule 18(c), SCRCP, this Court is empowered to make other orders to prevent delay or prejudice. This Court finds that this order will prevent delay and streamline the trial of this matter now set for February 24, 2019, in Greenville, South Carolina.

**Conclusion**

The Court hereby enjoins the claims at this time (whether they be made in arbitration or otherwise) of SCE&G described in the dispute which was the subject of the Carlos Brown letter provided to the Court and AAA proceeding dated November 11, 2019. SCE&G is ordered to immediately withdraw its demand for arbitration at this time. The Court retains jurisdiction to enter a permanent injunction and specific performance on the merits of the claims of SCE&G described in the dispute should SCE&G make further efforts to proceed with same.

**IT IS SO ORDERED.**

By: \_\_\_\_\_

Jean Hofer Toal  
Chief Justice, Retired  
Acting Circuit Court Judge  
jtoal@sccourts.org

Columbia, South Carolina  
November 18, 2019



Hampton Common Pleas

**Case Caption:** Jessica S Cook VS Santee Cooper , defendant, et al

**Case Number:** 2017CP2500348

**Type:** Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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