

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BERKELEY COUNTY  
In the Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

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Appellate Case No. 2020-001458

Case No. 2020-CP-08-00821

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**Dec 07 2020**

**SC Court of Appeals**

City of Goose Creek,.....Appellant,

v.

South Carolina Public Service Authority,.....Respondent.

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**CONSENT MOTION TO STAY APPEAL**

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Appellant City of Goose Creek (“Goose Creek” or the “City”), with the consent of Respondent South Carolina Public Service Authority (“Santee Cooper”), respectfully moves pursuant to Rule 240 of the South Carolina Appellate Court Rules for an order from this Honorable Court staying all proceedings in this matter until April 30, 2021. The reason for this request is that Santee Cooper and the owner of the Mt. Holly aluminum smelting facility (the “Mt. Holly Smelter” or “Smelter”) which is the subject of this case, Century Aluminum of South Carolina, Inc. (“Century”), have reached a preliminary agreement for Santee Cooper to continue providing power to the Smelter on terms that will allow the Smelter to remain open and operating for now. In support of this motion, Goose Creek shows as follows:

1. Goose Creek filed this case in the Court of Common Pleas of Berkeley County on March 31, 2020 seeking a declaratory judgment that the City's newly formed electric utility has the right to serve the Mt. Holly Smelter with electricity after the land upon which the Smelter sits is annexed into the municipal boundaries of Goose Creek. The parties briefed the issues in this case extensively and the Circuit Court held a hearing on this matter on September 17, 2020. On October 12, 2020, the Circuit Court issued an order and declaratory judgment that Santee Cooper has the exclusive right to serve the Mt. Holly Smelter unless and until Goose Creek takes additional steps under state law, and also declaring that the arrangement entered into between Goose Creek and Century violates public policy.

2. On November 2, 2020, Goose Creek filed a notice of appeal of the Circuit Court's decision; the next day, Goose Creek filed a motion requesting that this Court certify this case for review pursuant to Rule 204, SCACR and also expedite the proceedings in this case. The reason for Goose Creek's request was that the Mt. Holly Smelter was set to close at the end of the year if it could not obtain a cost-efficient supply of electricity, which closure would have left approximately 300 South Carolinians unemployed and left the Goose Creek community without an important economic engine that has been operating in the community for many years.

3. While this appeal was pending, Century and Santee Cooper engaged in discussions regarding the ongoing and future supply of electricity to the Mt. Holly Smelter. Goose Creek is now informed that Century and Santee Cooper have reached a preliminary agreement for the supply of power to the Smelter through March 31, 2021, as well as an agreement in principle<sup>1</sup> for

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<sup>1</sup> The City understands that, at this point, the proposal for continuing service beyond March 31, 2021, is not a binding agreement, and the proposal and any binding agreement thereon will be subject to appropriate approvals, including approval of the Santee Cooper Oversight Committee.

the supply of power to the Smelter for the next three years, on terms that, the City understands, will allow the Smelter to remain open and operating during that three-year term.

4. While Goose Creek believes its appeal is meritorious and presents pure questions of law for this Court to decide, one of the City's central goals in forming its municipal utility and bringing this case, in addition to providing electric utility service to certain property owned by Century that is newly annexed into the City, was to keep the Mt. Holly Smelter open and operating, and to preserve and grow the jobs and economic activity provided by the Mt. Holly Smelter. Goose Creek understands that the agreement between Century and Santee Cooper will allow the plant to remain open and operating, and allow the men and women who work at the Smelter to keep their jobs and allow the Smelter over time to hire additional workers.

5. Therefore, Goose Creek respectfully requests that the Court stay all proceedings in this case until April 30, 2021 in order to allow Century and Santee Cooper to complete negotiations and implement agreements reached regarding the future supply of electricity to the Mt. Holly Smelter. If those negotiations are successful, and if Century and Santee Cooper finalize terms that allow the Mt. Holly Smelter to remain open and operating, Goose Creek will, prior to April 30, 2021, report back to the Court its intentions regarding this appeal.

6. Counsel for Goose Creek has consulted with counsel for Santee Cooper regarding the relief requested in this motion, and Santee Cooper consents to this relief.

**WHEREFORE**, Goose Creek respectfully requests that this Court stay all proceedings in this case until April 30, 2021 to allow Century and Santee Cooper to complete negotiations and implement agreements reached regarding the continued supply of electricity to the Mt. Holly Smelter. The City will notify the Court on or before April 30, 2021 as to the results of those

negotiations and implementation of any agreements, and its intentions regarding this appeal. This stay would be without prejudice to either parties' rights in this appeal.

Respectfully submitted,

s/Mitchell Willoughby

Mitchell Willoughby, S.C. Bar No. 6161

Tracey C. Green, S.C. Bar No. 9342

Andrew R. Hand, S.C. Bar No. 101633

**WILLOUGHBY & HOEFER, P.A.**

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*Attorneys for Appellant*

December 7, 2020  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BERKELEY COUNTY  
In the Court of Common Pleas

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**PROOF OF SERVICE**

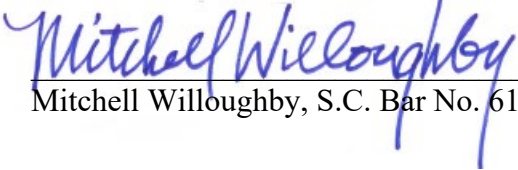
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This is to certify that the undersigned counsel, a shareholder with the law firm Willoughby & Hoefler, P.A., has caused to be served this day one (1) copy of Appellant City of Goose Creek's **Consent Motion to Stay Appeal** via electronic mail at the email address as stated in the Attorney Information System and as set forth below to the following:

John T. Lay, Jr., Esquire  
Lindsay A. Joyner, Esquire  
Jordan M. Crapps, Esquire  
Gallivan, White & Boyd, P.A.  
P.O. Box 7368  
Columbia, SC 29202  
jlay@gwblawfirm.com  
ljoyner@gwblawfirm.com  
jcrapps@gwblawfirm.com

*Attorneys for Respondent South Carolina Public Service Authority*

A copy of the email serving counsel for Respondent, is attached hereto.

  
\_\_\_\_\_  
Mitchell Willoughby, S.C. Bar No. 6161

December 7, 2020  
Columbia, South Carolina

**From:** [Mitchell Willoughby](#)  
**To:** [jlay@gwblawfirm.com](mailto:jlay@gwblawfirm.com); [Lindsay Joyner](#); [jcrapps@gwblawfirm.com](mailto:jcrapps@gwblawfirm.com)  
**Cc:** "[Timothy A. Domin \(tdomin@clawsonandstaubes.com\)](mailto:tdomin@clawsonandstaubes.com)"; [Tracey Green](#); [Andrew R. Hand](#); "[B. Rush Smith III](#)"  
**Subject:** City of Goose Creek v SC Public Service Authority | Appellate Case No. 2020-001458  
**Date:** Monday, December 7, 2020 2:17:14 PM  
**Attachments:** [2020-12-07 Filing ltr re Mot to Stay Appeal \(Goose Creek v SCPSA\).pdf](#)  
[2020-12-07 Mot to Stay Appeal \(Goose Creek v SCPSA\).pdf](#)

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Counsel,

As permitted by part (g)(3) of Supreme Court Order 2020-05-29-02, I am herewith serving via email Appellant City of Goose Creek's Consent Motion to Stay Appeal in the above-captioned matter. Shortly, I will be filing these documents with the Supreme Court electronically as permitted by part c(6) of the Order, and will attach this email to the certificate of service of same.

Should you have any issues opening the attachments, please let me know. Thank you. With warmest regards,

Mitch



Mitchell Willoughby, Esquire  
**WILLOUGHBY & HOEFER, P.A.**  
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**SC Court of Appeals**

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**From:** [Mitchell Willoughby](mailto:Willoughby@willoughbyhoefer.com)  
**To:** [Supreme Court Filings](#)  
**Cc:** [jlay@gwblawfirm.com](mailto:jlay@gwblawfirm.com); [Lindsay Joyner](mailto:Lindsay.Joyner@scbar.org); [jcrapps@gwblawfirm.com](mailto:jcrapps@gwblawfirm.com); "Timothy A. Domin (tdomin@clawsonandstaubes.com)"; [Tracey Green](#); [Andrew R. Hand](#)  
**Subject:** City of Goose Creek v SC Public Service Authority | Appellate Case No. 2020-001458  
**Date:** Monday, December 7, 2020 2:36:56 PM  
**Attachments:** [2020-12-07 Filing ltr re Mot to Stay Appeal \(Goose Creek v SCPSA\).pdf](#)  
[2020-12-07 Mot to Stay Appeal \(Goose Creek v SCPSA\).pdf](#)  
[2020-12-07 POS re Mot to Stay Appeal \(Goose Creek v SCPSA\).pdf](#)

To whom it may concern:

Please see the Appellant City of Goose Creek's attached Consent Motion to Stay Appeal for filing in the above-captioned matter. Thank you and with warmest regards,

Mitch



Mitchell Willoughby, Esquire  
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**WILLOUGHBY & HOEFER, P.A.**  
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\_\_\_\_\_  
\*ALSO ADMITTED IN TEXAS

\*\*ALSO ADMITTED IN WASHINGTON, D.C.

\*\*\*ALSO ADMITTED IN CALIFORNIA

\*\*\*\*ALSO ADMITTED IN NORTH CAROLINA

**VIA ELECTRONIC FILING**

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

RE: *City of Goose Creek, Appellant v. South Carolina Public Service Authority,  
Respondent; Appellate Case No. 2020-001458.*

Dear Mr. Shearouse:

Attached for electronic filing in accordance with Supreme Court Order 2020-05-29-02, part (c)(6), and pursuant to Rule 240 of the South Carolina Appellate Court Rules, please find the Consent Motion to Stay Appeal of Appellant City of Goose Creek in the above-captioned matter. As permitted by Order 2020-05-29-02, part (d), no other copies, whether paper or electronic, are being provided.

By copy of this letter, we are serving counsel for Respondent via email as permitted by Order 2020-05-29-02, part (g)(3), and attached is a proof of service to that effect.

A check in the amount of \$50.00 for the filing fee associated with this motion is being forwarded to your attention via U.S. Mail.

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(continued...)

If you have any questions or need additional information, please do not hesitate to contact me. With warmest regards, I am,

Very truly yours,

**WILLOUGHBY & HOEFER, P.A.**

  
Mitchell Willoughby

MW/lla  
attachments

cc: John T. Lay, Jr., Esquire  
Lindsay A. Joyner, Esquire  
Jordan M. Crapps, Esquire