ALAN WILSON
ATTORNEY GENERAL

June 10, 2025

Paul W. Dillingham, Esquire
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Rock Hill, SC 29731-6790

Dear Mr. Dillingham:

You note that your firm represents the City of Rock Hill and that you seek an opinion as to whether the South Carolina Public Service Authority ("Santee Cooper") is "restricted from selling or purchasing electric energy to or from the City under the plain language of S.C. Code Ann. § 58-31-320?" You further ask "[e]ven if the answer is yes, is a restriction on the City's ability to purchase or sell electric energy from the Authority enforceable under the SC Constitution?" These questions have never been addressed by our courts or in an opinion of this Office. As far as we can tell, § 58-31-320 has not been formally interpreted.

In your letter, you set forth a detailed legal analysis, which we greatly appreciate. You state that "[i]t is the City's position that the plain language of the statute does not restrict the Authority from contracting with the City for the purchase or sale of electricity." Further, you argue that "[e]ven if a construction of the statute could be read to prevent a municipality from being able to purchase or sell electric energy from the Authority, such construct would fundamentally conflict with the SC Constitution and well-established law regarding the rights of municipalities in the context of utility services." The statute in question is open to different interpretations. It can be read as a restriction upon Santee Cooper's service list. Or it can be interpreted as not restricting its sale to municipalities.

It is our understanding that the City of Rock Hill and other municipalities already receive a portion of their electrical power from Santee Cooper through the Piedmont Municipal Power Agency (PMPA). The PMPA was created by legislative act in 1978 and is a joint collection of various upstate municipalities, including the City of Rock Hill. In 2011, Santee Cooper and the PMPA reached a long-term agreement whereby Santee Cooper would sell electrical power to PMPA who would then distribute power to its members. As one publication described such agreement,

> Santee Cooper is South Carolina's largest producer of electricity and transmits power across the State to its own retail customers and to distribution through wholesale and

> municipal customers. PMPA provides electricity to 10 municipal utilities in South Carolina, serving the cities of Abbeville, Clinton, Easley, Gaffney, Greer, Laurens, Newberry, Rock Hill, Union and Westminster.
>
> The contract provides that PMPA will purchase power [from Santee Cooper] to meet all of its land beyond the amount served by: PMPA's partial ownership of the Catawba Nuclear Station; its participants' share of electricity from the Southeastern Power Administration hydroelectric facilities; and load met by individual generating sources owned by PMPA participants.

Summerville Journal Scene, January 30, 2011. Thus, your opinion request would encompass not only the City of Rock Hill, but other similarly situated municipalities who are members of the PMPA.

Moreover, Santee Cooper has been selling electrical power to the Town of Bamberg since 1977, not long after § 58-31-320 was enacted in 1973. The contract was renewed for 20 years in 2016. Charleston Post and Courier, November 2, 2016.

Law Analysis

Section 58-31-320 is titled in the Code as "Customers to Whom [Public Service] Authority shall provide electric service." This provision states as follows:

> After July 9, 1973, the Public Service Authority shall have the right to provide electric service only to, and it shall have the right to serve:
>
> (1) Central Electric Power Cooperative, Inc., including:
>
> (a) all electric cooperatives that are members of Central Electric Power Cooperative, Inc., on July 9, 1973;
> (b) any electric cooperative which after July 9, 1973, becomes a member of Central Electric Poer Cooperative, Inc.;
> (c) any electric cooperative which after July 9, 1973, ceases to be a member of Central Electric Power Cooperative, Inc.; and
> (d) in the event Central Electric Power Cooperative, Inc. ceases to exist as a corporate entity, any electric cooperative which was a member of Central Power Cooperative, Inc., at the time of its dissolution;
>
> (2) all premises, customers, and electric cooperatives served by it on July 9, 1973;
>
> (3) its present service area a defined in Section 58-31-330;
>
> (4) those areas owned, leased or controlled by the Public Service Authority adjacent to the lakes and waterways of Federal Power Commission Project No. 199.

> If, after July 9, 1973, any customers, premises, or electric cooperatives located outside the present service area of the Public Service Authority as defined in Section 58-31-330 and being served by the Public Service Authority, including any subsequent expansions or additions by such customers, premises, or cooperatives, ceases or discontinues accepting electrical service from the Public Service Authority, the Public Service Authority may subsequently sell and furnish electrical service to new customers, premises, or electric cooperatives from its major transmission lines in an amount not exceeding the amount of power the sale of which was lost by reason of such discontinuance of service.
>
> Nothing contained herein shall be construed to restrict the right of the Public Service Authority to furnish electric service to its own premises; to exchange or interchange electric service with purchase electric energy from, or sell energy to any other electric utility or any joint agency organized and operating pursuant to Chapter 23 of Title 6; to construct additional facilities, within or without its present service area as defined in Section 58-31-330; to construct additional delivery points to or for any of the premises or customers it is authorized to serve as provided for in this section; or to fulfill the growth needs of any customer legal served by it.

The overarching purpose of the Act was to give Santee Cooper exclusive service rights in three counties (Horry, Berkeley and Georgetown). Charleston Evening Post, June 21, 1973.

It is well settled that "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n., 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). As was stated by the Court in State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010),

> [t]he Court should give words "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. S.C. Bd. Of Physical Therapy Exam'rs., 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartrigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language must 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). "Any ambiguity in a statute must be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).

With these principles of construction in mind, we point out the following by way of background. As noted in Op. S.C. Att'y Gen., 1999 WL 387039 (April, 1999),

> . . . the South Carolina Public Service Authority was created by the General Assembly for the purpose, among others, of producing and selling electric power. . . .

(quoting Boyce v. Lancaster Co. Nat. Gas Auth., 266 S.C. 398, 223 S.E.2d 769 (1976)). And, in Op. S.C. Att'y Gen., 1994 WL 136191 (No. 94-19) (March 19, 1994), we advised that "[t]he Public Service Authority by statute possesses expansive governmental powers and duties." (citing § 58-31-20). Moreover, in Clarke v. S.C. Pub. Serv. Auth., 177 S.C. 427, 181 S.E. 481, 484 (1935), our Supreme Court recognized that "the Authority [possesses] the power to sell its electric energy in other states as well as in South Carolina."

As mentioned above, your concern is focused primarily upon the meaning of § 58-31-320. You note that this statute "sets forth the Authority's authorization to provide electrical services." The provision gives Santee Cooper "the right" to provide electrical power "only to" certain customers. At first blush, it would appear that such language is prohibitory. While these words are certainly restrictive in form, in your view, nothing in § 58-31-320 limits "the right of the Authority to sell electric energy to a municipality." All of this is true, of course; however, the question remains as to whether the statute was intended to prohibit the sale of electricity by Santee Cooper to Rock Hill. While arguments can be made on both sides, we think the better reading is that the sale by Santee Cooper to Rock Hill is not prohibited.

Your argument, as stated in your request letter, is as follows:

> [t]he Statute expressly limits the Authority from providing electric services to any persons or entities other than those expressly set forth therein - a list that would arguably not encompass a municipality. However, the Statute subsequently provides that "[n]othing herein shall be construed to restrict the right of the [Authority] to ... purchase electric energy from, or sell electric energy to any other electrical utility .... " S.C. Code Ann. § 58-31-320. This carve-out presents two important points. First, the Statute distinguishes the right of the Authority to provide electric services, which is limited by the Statute, from the right of the Authority to purchase or sell electric energy, which the Statute does not limit. Second, the Statute authorizes the Authority to purchase or sell electric energy to "any other electric utility," not just those persons or entities that fall within the limited scope of "electric utility" as defined under the Enabling Act.[ ] Given that the Statute must be liberally construed in favor of the rights of a municipality, the appropriate construction is that the Statute does not prevent the Authority from selling or purchasing electric energy to or from a municipality.

Moreover, § 58-31-30(8) has continued to provide that Santee Cooper is authorized to "manufacture, produce, generate, transmit, distribute and sell water power, steam electric power, hydroelectric power or mechanical within and without the State of South Carolina." (emphasis added). Further, Santee Cooper possesses the power to ". . . do all acts and things necessary or convenient to carry out the powers granted to it by this Chapter or any other law;". These provisions reinforce an interpretation that § 58-31-320 does not prohibit the sale to Rock Hill and other similarly situated municipalities in the PMPA.

Given that Santee Cooper possesses express authority to purchase or sell electricity to "any other electric utility," we think your argument that such authority encompasses the power to

sell to the City of Rock Hill or similarly situated municipalities in the PMPA is likely correct. In Johnson v. Piedmont Municipal Power Agency, 277 S.C. 345, 351, 287 S.E.2d 476, 479 (1982), our Supreme Court addressed the authority of municipalities to provide electric power to its residents:

> Article VIII, § 16 authorizes a municipality, upon a majority vote of its electors to acquire and operate an electric system. It is conceded the ten municipalities who are members of PMPA presently own and operate electric systems and are providing electricity to their respective consumers. The electors of these ten municipalities have already made the basic decision to enter into the providing of electric services. The PMPA municipalities would therefore have the constitutional authority to join together directly with each other and with the North Carolina joint agency in a project to provide electricity to their consumers.

Thus, § 58-31-320 anticipates that Santee Cooper will sell electric power to municipalities, such as Rock Hill, and other similarly situated members of the PMPA. These are themselves electric power providers. While a municipality might not be considered a "utility" in the ordinary sense, or in the definition set forth in § 58-31-320, it is indeed that, in our view, for purposes of § 58-31-320. A broad interpretation, protecting the right of a municipality to provide electric power to its inhabitants is here applicable. Certainly, shortly after § 58-31-320 was enacted, Santee Cooper began providing electrical power to the Town of Bamberg. This interpretation, with no contradiction by the General Assembly over the years, is instructive and this long practice must be given great weight. Etiwan Fertilizer Co. v. Tax Comm., 217 S.C. 354, 359-60, 60 S.E.2d 682, 684 (1950).

A statute should be read as a whole and not interpreted in isolation. Further, "[s]tatutes which are part of the same legislative scheme should be read together." Great Games, Inc. v. S.C. Dept. of Revenue, 339 S.C. 79, 84, 529 S.E.2d 6, 8 (2000). As our Court of Appeals explained in Young v. Keel, 431 S.C. 554, 558, 848 S.E.2d 67, 69 (Ct. App. 2020), (quoting Blackstone Commentaries on the Laws of England * 60, n. 54 (14th ed. 1803)),

> ("It is established rule of construction that statutes in pari materia, or upon the same subject, must be construed with reference to each other."). The canon rests on the fiction that when the legislature passes a new statute (here, § 58-31-320) it is presumed to be aware of existing statutes dealing with the same topic (§ 58-31-30) and intends for the statutes to be read together as a seamless, cohesive system. See generally 2B Sutherland, Statutory Construction § 51:2 (7th ed.); Harrison v. Casey, 3 S.C. L. 390, 391 (1804).

Thus, reading § 58-31-320 together with § 58-31-30(8), we do not believe § 58-31-320 was intended to provide the exclusive customer list for Santee Cooper. As Senator Rembert Dennis described it, the 1973 legislation (§ 58-31-320) settling territorial disputes between public and private power made the three counties [Georgetown, Berkeley and Horry] Santee Cooper's primary service area. Charleston News and Courier, March 21, 1974, at 18. In short, the 1973 law was not intended to restrict the sale in question, particularly in light of the fact that Santee

Cooper is already selling electricity to the PMPA, of which Rock Hill is a member. The fact that Santee Cooper began selling to Bamberg only four years after § 58-31-320 was passed is telling.

Circuit Judge Roger Young summarized the various statutes regarding Santee Cooper's evolving history in City of Goose Creek v. S.C. Pub. Serv. Auth., C/A 2020-CP-08-00821 (Oct. 12, 2020) as follows:

> Santee Cooper's right to exclusively serve the Century Facility evolved through three phased actions by the General Assembly: 1) in Act 1934 (38) 1507), the General Assembly created the Santee Cooper as a utility "for the benefit of all the people of the State," (see S.C. Code Ann. § 58-31-80) . . ., yet allowed Santee Cooper ;to compete for the right to serve customers; 2) in 1973, in passing Act No. 412, the General Assembly decided Santee Cooper should be assigned certain areas, premises, and customers it had the right and obligation to serve without competition (generally referred to in this litigation as "service territory"), and 3) in 1984, in passing Act No. 399, the General Assembly saw fit to preserve the status quo, but also carved out certain premises Santee Cooper was then serving from other utilities' territories and mandated those premises "must continue to be so served" by Santee Cooper.

Declaratory Judgment Order, at 7.

Accordingly, considering that § 58-31-30(8), allowing Santee Cooper to sell power throughout the State and in other states, has remained on the books following passage of § 58-31-320 in 1973, we do not conclude that § 58-31-320 prohibits Santee Cooper from selling electrical power to the City of Rock Hill. Further, as the Court in Johnson v. PMPA, supra concluded, members of the PMPA, including Rock Hill, themselves serve as providers of electricity. The PMPA, pursuant to a long term contract, has received electrical power from Santee Cooper. Section 58-31-320 expressly states that the statute does not prohibit Santee Cooper from selling power to other utilities. As such, under a broad reading of § 58-31-320, it would include the City of Rock Hill and other PMPSA members, similarly situated.

Alternatively, you argue that "[e]ven if a construction of the statute could be read to prevent a municipality from being able to purchase or sell electric energy from the Authority, such construct would fundamentally conflict with the S.C. Constitution and well-established law regarding the rights of municipalities in context of utility services." Your analysis is as follows:

> [u]nder South Carolina law municipalities are afforded significant rights and discretion in providing electric utilities and selecting and consenting to providers of electric utilities. See S.C. Const. art. VIII, 15 (prohibiting Legislature from enacting any law which grants the right to a utility provider to construct, operate, or use the public streets or public property without first obtaining the consent of the municipality); S.C. Code Ann. § 5-31-610 (authorizing cities and towns to own and operate electric systems comprised of electricity distribution facilities or electricity generating facilities); S.C. Code Ann. § 5-31-250 (authorizing cities and towns to supply and furnish electric and other utilities to its citizens, to set rates, and require

> payment); Moody v. City of Orangeburg, 319 S.C. 184,186,460 S.E.2d 374,375 (1995) (holding that "the [Public Service Commission] does not have authority to regulate contracts or rates made by any municipality with its customers"); Blue Ridge Elec. Co-op., Inc. v. City of Seneca, 297 S.C. 283, 290, 376 S.E.2d 514, 518 (1989) (holding that a municipality has the right to provide electric service to new customers and premises in areas it annexes, notwithstanding the area's previous assignment to another electric supplier); Berkeley Elec. Co-op. Inc. v. S.C. Pub. Serv. Comm'n, 304 S.C. 15, 18, 402 S.E.2d 674, 676 (1991) (holding that a municipality has the right to designate a supplier of electric utilities within newly annexed area); City of Rock Hill v. Pub. Serv. Comm'n of S.C., 308 S.C. 175, 178, 417 S.E.2d 562, 564 (1992) (reaffirming that "the City's right to give or to deny consent to utilities within the corporate limits cannot be impinged upon by the [Public Service] Commission"); S.C. Elec. & Gas Co. v. Town of Awendaw, 359 S.C. 29, 37. 596 S.E.2d 482, 487 (2004) (holding that "a municipality may ... impose by ordinance a reasonable franchise fee on an existing utility provider in subsequently annexed or newly incorporated areas").
>
> "Article VIII. Section 16 of the South Carolina Constitution specifically authorizes any municipality to own and operate electric utilities. The furnishing of electricity by a municipality is a governmental function .... " Moody v. City of Orangeburg, 319 S.C. 184. 186, 460 S.E.2d 374, 375 (1995) (internal citations omitted). "This right may be further implemented by legislation. but it may not be withdrawn or limited." Calcaterra v. City of Columbia, 315 S.C. 196, 197, 432 S.E.2d 498, 499 (Ct. App. 1993). "Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." S.C. Const. Art. VIII, § 17.
>
> Given that a municipality has the express right to own and operate electric utilities and to furnish electricity to its customers, it can be "fairly implied" that a municipality must also have the right to purchase or sell electric energy in order to properly perform this governmental function. If the intent of the Statute was to curb the City's ability to purchase or sell electric energy - a function of owning and operating electric utilities - the Statute would directly conflict with the SC Constitution and the case law applying the pertinent provisions thereof.

We concur. As our Supreme Court stated in City of Aiken, supra,

> Article VIII, Section 15, of the South Carolina Constitution prohibits the General Assembly from enacting laws which grant the right to construct or operate upon the streets or property of a municipality without first obtaining the consent of such municipality.
>
> This Court has affirmed the right of municipalities to authorize expansion of existing service or to provide alternative service. . . . (citations omitted). When service to a new area is not provided by the municipality, the municipally assigned supplier possesses exclusive rights. . . .

> We find that the City was within its constitutional authority to designate an electric service supplier for new customers in the annexed area and to enact ordinances affecting other suppliers of electricity. S.C. Const. Art. VIII, § 15.

305 S.C. at 468, 409 S.E.2d at 403.

Moreover, in City of Rock Hill, the Court noted that

> [i]n subsequent cases, this Court held the City's right to consent included the power to designate another supplier other than the municipal utility or the assigned supplier. Berkeley Electric Co-Op v. South Carolina Public Service Commission, 304 S.C. 15, 402 S.E.2d 674 1991); City of Aiken v. Aiken Elec. Co-Op, 305 S.C. 466, 409 S.E.2d 403 (1991); South Carolina Electric & Gas v. Berkeley Electric Cooperative, Inc., 306 S.C. 228, 411 S.E.2d 218 (1991). In these cases, we have implicitly acknowledged that without the ability to provide service or authorize another utility to provide service, the constitutional right to grant or withhold consent would be meaningless.

308 S.C. at 178, 417 S.E.2d at 564.

Our Supreme Court, in City of Orangeburg v. Moss, 262 S.C. 299, 302-03, 204 S.E.2d 377, 378 (1974), explored the history of municipalities operating electrical power systems in South Carolina. There, the Court stated:

> [w]hen the question of the power of a city to operate an electrical facility was first presented to the South Carolina supreme Court in 1890, it took a very restricted view of municipal powers. In the case of Mauldin v. City Council of Greenville, 33 S.C. 1, 11 SE. 434, the Court, relying on Judge Dillon's work on Municipal Corporations and the opinion of Justice Waite in Ottawa v. Carey, 108 U.S. 110, 2 S.Ct. 361, 27 L. Ed. 669, held that it was ultra vires the power of the City of Greenville to operate an electric facility to supply light to private persons. The Court, speaking by Justice McGowan, said: 'We cannot doubt that the purchase of the system producing incandescent lights, so far as it was to furnish lights to private persons, with or without compensation, was not a corporate act of the city council, and binding upon the corporators, but was beyond their authority, as the governing body of the corporation.'
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> The case of Mauldin v. City Council of Greenville was, in effect, reversed by the convention which drafted the South Carolina Constitution of 1895. Article 8 Section 5 provides as follows:
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> > "Waterworks systems; plants furnishing lights and ice. – Cities and towns may acquire, by construction or purchase, and may operate, waterworks systems and plants for furnishing lights and ice manufacturing plants and may furnish water and lights and ice, to individuals, firms and private corporations for a reasonable compensation: Provided, that no such

> construction or purchase shall be made except upon a majority vote of the electors in said cities and towns who are qualified to vote on the bonded indebtedness of said cities or towns."

Our Supreme Court has emphasized time and again that a statute must be construed, if possible, to avoid constitutional conflict. See State v. Peake, 353 S.C. 499, 504, 579 S.E.2d 297, 299 (2003). As was stated in Davis v. County of Greenville, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996), ". . . we construe the statutes so as to render them constitutional. ". . . (A) statute will never be construed unconstitutional where it can be, in any possible way, reconciled with the provisions of the Constitution." Germania Savings Bank v. Town of Darlington, 50 S.C. 337, 362, 27 S.E. 86, 858 (1897).

Here, § 58-31-320 and Art. VIII, § 15 were adopted at virtually the same time – in 1973. We cannot imagine that the General Assembly, on one hand, provided in the Constitution the requirement that a municipality must consent to the use of its streets or property for utilities but, at the same time, sought in the passage of § 58-31-320 (Act No. 412 of 1973) to prohibit a municipality, particularly a member of the PMPA, from purchasing electric power from Santee Cooper. Thus, we construe the statute as not so prohibiting such sale to the City of Rock Hill. Such an arrangement is little different from Rock Hill being provided electricity by the PMPA.

Conclusion

As your letter suggests, section 58-31-320 is subject to alternative interpretations. The statute's language is awkward, certainly. However, the "only to" language may be read simply as emphasizing the "right" of Santee Cooper in the three counties of Berkeley, Georgetown, and Horry. Moreover, as mentioned above, the purpose of the Act was to ensure that Santee Cooper had its own territory.

In addition, this provision makes it clear that Santee Cooper is not prohibited from selling "electrical energy to any other electrical utility." While the definition of "electrical utility" in section 58-31-310 appears to exclude municipalities, we do not deem this definition as controlling here for purposes of the limitations found in section 58-31-320. As you indicate, the statute must be interpreted broadly for purposes of protecting the rights of a municipality. Indeed, section 58-27-1230 refers to a municipality as an "electric utility." See Johnson v. PMPA, supra (noting that the South Carolina Constitution ensures the right of a municipality to provide electric power to its residents).

Further, Santee Cooper has, for years, provided electricity to Rock Hill indirectly through the PMPA, of which it is a member. It apparently has not been thought that such sale violated any law. Likewise, for Santee Cooper to sell electricity directly to Rock Hill or other similarly situated member of the PMPA is little different, and would not, in our opinion, contravene section 58-31-320. Moreover, the Legislature has long acquiesced in this transaction, as well as Santee Cooper's providing electrical power directly to the Town of Bamberg since 1977. If the

General Assembly had wished to prohibit such sales to municipalities by Santee Cooper, it could easily have done so in the 1973 Act, or subsequently. Yet, tellingly, it did not.

Finally, section 58-31-320 must be construed in light of Article VIII, Section 15 of the Constitution. As you note, if section 58-31-320's purpose "was to curb the City's ability to purchase or sell electric energy- a function of owning and operating electric utilities- the Statute would directly conflict with the SC Constitution and the case law applying the pertinent provisions thereof." In this instance, Art. VIII, Section 15 and section 58-31-320 were adopted at virtually the same time, and it is difficult to imagine, in that light, that the statute sought to prohibit a sale of electrical power by Santee Cooper to a member of the PMPA, such as Rock Hill or other similarly situated municipalities. Art. VIII, Section 15 protects the right of municipalities against any such prohibition.

Therefore, while § 58-31-320 is awkwardly worded, we do not deem it to prohibit the sale of electricity by Santee Cooper to Rock Hill. The statute appears never to have been so interpreted. Thus, we do not believe a court would interpret the statute so as to prohibit the sale by Santee Cooper to Rock Hill.

Sincerely,

Robert D. Cook
Solicitor General