STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, et al.	)	Civil Action No. 2017-CP-25-348
	)	
Plaintiff,	)	
	)	DEFENDANT CENTRAL ELECTRIC
vs.	)	POWER COOPERATIVE, INC.'S
	)	ANSWER TO FIFTH AMENDED CLASS
South Carolina Public Service Authority	)	ACTION COMPLAINT AND AMENDED
(also known as Santee Cooper), et al.,	)	CROSS-CLAIMS AGAINST SOUTH
	)	CAROLINA PUBLIC SERVICE
Defendants.	)	AUTHORITY AND ITS DIRECTORS
	)	

Defendant Central Electric Power Cooperative, Inc. ("Central") answers the Plaintiffs' Fifth Amended Class Action Complaint and Cross-Claims against Defendant South Carolina Public Service Authority ("Santee Cooper") and its directors as follows:

I. FOR A FIRST DEFENSE AND RESPONSE TO SPECIFIC ALLEGATIONS OF FIFTH AMENDED CLASS ACTION COMPLAINT

1. All allegations not specifically admitted are denied.

2. Central lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1, 2, 3, 4, 5, 6, and 7.

3. Paragraph 8 is admitted with the qualification that Central's admission is based on the understanding that the term "Distribution Cooperatives" is with reference to Central's member cooperatives. All subsequent admissions and denials by Central in this Answer are made with the same understanding.

4. Paragraph 9 is admitted to the extent of the named individual defendants' status as current or former members of the Santee Cooper board of directors. Central lacks information

sufficient to form a belief as to the respective involvement of each of the named individual defendants, and therefore denies the remainder of Paragraph 9.

5. Paragraph 10 is admitted to the extent of Central's status as a South Carolina non-profit corporation that does business in counties throughout South Carolina, including Hampton County. Answering the remaining allegations of Paragraph 10, Central admits the existence of the referenced web page and craves reference to the same for its complete contents.

6. Paragraphs 11, 12, 13, and 14 are admitted.

7. Paragraph 15 is admitted upon information and belief.

8. Answering Paragraph 16, Central admits that Defendants Santee Cooper, Central, Palmetto, and SCE&G are engaged in the sale of electrical power to their respective customers and admits that sale of electrical power is pursuant to contracts that are performed, in whole (Palmetto) or in part (Santee Cooper, Central, & SCE&G), in Hampton County.

9. Central lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

10. Paragraph 18 sets forth legal conclusions to which no responsive pleading is required.

11. Answering Paragraph 19, Central admits SCE&G's and Santee Cooper's separate decisions to construct and to abandon construction of two new nuclear reactors at the V.C. Summer facility ("V.C. Summer Project"), and admits the Fifth Amended Complaint relates, in part, to those decisions. Central lacks information or knowledge sufficient to form a belief as to what prompted the individual Plaintiffs to file this action.

12. Paragraph 20 is denied upon information and belief.

13. Answering Paragraph 21, Central admits Santee Cooper distributes power that is used in all 46 counties in the State of South Carolina, admits that Central is a wholesale purchaser of power from Santee Cooper, admits that Central is Santee Cooper's largest customer, admits that Central supplies power to its member cooperatives which in turn supply power to their members who, collectively, are located in all 46 counties in South Carolina, and admits that Santee Cooper also supplies power directly to retail customers. Any remaining allegations are denied.

14. Paragraphs 22, 23, 24, 25, 26, 27, and 28 are admitted upon information and belief.

15. Answering Paragraph 29, Central admits that as early as 2009 Santee Cooper was aware that the increased base load it would receive from a 45% ownership interest in the V.C. Summer Project was not needed to serve Santee Cooper's foreseeable demand, admits that Santee Cooper was including in its costs of service to its customers, including Central, charges for this increased base load that Santee Cooper would receive from its 45% ownership interest in the V.C. Summer Project, and admits these charges were passed on to Central's member cooperatives. Central lacks information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29.

16. Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, and 38 are admitted in substance upon information and belief.

17. Answering Paragraph 39, Central admits that Santee Cooper was aware that the amount of base load it would receive from a 45% ownership interest in the V.C. Summer Project was unnecessary. Central lacks sufficient information or knowledge sufficient to form a belief as to the remaining allegations of Paragraph 39.

18. Paragraph 40 is admitted.

19. Answering Paragraph 41, Central admits the V.C. Summer Project was commenced, admits that Santee Cooper incurred financing costs for the V.C. Summer Project, and admits that costs associated with the V.C. Summer Project were passed on to Central, which costs were passed on to Central's member cooperatives. Central admits upon information and belief allegations regarding engineering review of the Project.

20. Paragraph 42 is admitted.

21. Paragraphs 43 and 44 are admitted upon information and belief.

22. Paragraphs 45, 46, 47, 48, 49, 50, and 51 are admitted.

23. Answering Paragraph 52, Central admits that the V.C. Summer Project continued to experience cost overruns and delays and admits that an external review of the V.C. Summer Project concluded that the V.C. Summer Project was mismanaged by the parties with management responsibility, which parties did not include Central. Central denies having control over the V.C. Summer Project and denies any wrongdoing as alleged or implied in subparts f., g., l., and o. Central objects to the remaining allegations of Paragraph 52 because these subparts do not comply with the pleading requirements under the applicable South Carolina Rules of Civil Procedure, specifically Rule 8(a) ("short and plain statement") and Rule 8(e) ("Each averment of a pleading shall be simple, concise, and direct."), and Central cannot reasonably be expected to respond to three pages of single-spaced text addressed to the conduct of other parties.

24. Answering Paragraph 53, Central admits that costs associated with the V.C. Summer Project were passed on to Santee Cooper's customers, including Central, and admits that these costs passed on to Central were in turn passed on to Central's member cooperatives.

Central lacks information sufficient to form a belief as to what portion of these costs were passed on to the member cooperatives' members. Any remaining allegations are denied.

25. Answering Paragraph 54, Central admits that it is a wholesale purchaser of power from Santee Cooper, admits that Central is Santee Cooper's largest customer, admits that Central supplies power to its member cooperatives which in turn supply power to their members, admits Central is subject to the governance provisions of the Electric Cooperative Act, S.C. Code Ann. § 33-49-10, *et seq*., and admits that, pursuant to the contract between Central and Santee Cooper, Central is entitled to comment on Santee Cooper's decisions.

26. Answering Paragraph 55, Central admits it has contractual and statutory responsibilities to its member cooperatives. Central denies the remaining allegations of Paragraph 55 to the extent that they allege that Central's contractual and statutory responsibilities owed to its member cooperatives are also owed directly to its member cooperatives' members.

27. Paragraphs 56, 57, 58, 59, 60 and 61 are denied.

28. Answering Paragraph 62, Central admits the allegations of mismanagement by the SCANA Defendants. The remainder of Paragraph 62 asserts legal conclusions as to another party to which no responsive pleading is required by Central.

29. The substance of Paragraphs 63 and 64 is admitted upon information and belief.

30. Paragraphs 65, 66, 67, 68, 69, 70, 71, and 72 are admitted.

31. Paragraph 73 is denied as to Central.

32. Paragraphs 74, 75, and 76 are admitted.

33. Central lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 77.

34. Answering Paragraph 78, Central admits that Santee Cooper's direct and indirect customers, including Central, will receive no use, service, commodity, or other benefit from the abandoned V.C. Summer Project, and admits that Santee Cooper's stated intent is to shift the entire cost of Santee Cooper's 45% ownership interest in the abandoned V.C. Summer Project to Santee Cooper's direct and indirect customers, including Central.

35. The substance of Paragraph 79 is admitted upon information and belief.

36. Paragraph 80 is denied as to Central.

37. Paragraphs 81, 82, and 83 do not contain averments to be admitted or denied.

38. Answering Paragraph 84, Central admits that the prerequisite in Rule 23(a)(1), SCRCP, is satisfied because the class as defined is so numerous that joinder of all members is impracticable. The remaining allegations of Paragraph 84 are denied.

39. Paragraphs 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, and 96 are denied.

40. Answering the incorporated allegations of Paragraph 97, Central incorporates the preceding admissions and denials as if fully restated.

41. Paragraph 98 and 99 do not set forth averments to be admitted or denied.

42. Answering Paragraph 100, Central admits that Santee Cooper exceeded its statutory authority by imposing rates that included costs associated with the V.C. Summer Project, and admits that Santee Cooper's direct customers, including Central, should have that portion of the rates refunded to them. Central denies the remaining allegations of Paragraph 100.

43. Answering the incorporated allegations of Paragraph 101, Central incorporates the preceding admissions and denials as if fully restated.

44. Paragraphs 102, 103, 104, 105, 106, and 107 set forth an alleged cause of action by the Plaintiffs specific to Santee Cooper's board of directors and requires no response by Central.

45. Answering the incorporated allegations of Paragraph 108, Central incorporates the preceding admissions and denials as if fully restated.

46. Paragraphs 109, 110, 111, 112, 113, 114, and 115 set forth an alleged cause of action by the Plaintiffs specific to Santee Cooper's board of directors and requires no response by Central.

47. Answering the incorporated allegations of Paragraph 116, Central incorporates the preceding admissions and denials as if fully restated.

48. Paragraphs 117, 118, 119, 120, 121, and 122 set forth an alleged cause of action by the Plaintiffs specific to Santee Cooper and requires no response by Central.

49. Answering the incorporated allegations of Paragraph 123, Central incorporates the preceding admissions and denials as if fully restated.

50. Paragraphs 124, 125, 126, 127, 128, 129, and 130 set forth an alleged cause of action by the Plaintiffs specific to Santee Cooper and requires no response by Central.

51. Answering the incorporated allegations of Paragraph 131, Central incorporates the preceding admissions and denials as if fully restated.

52. Paragraphs 132, 133, 134, 135, and 136 set forth an alleged cause of action by the Plaintiffs specific to Santee Cooper and requires no response by Central.

53. Answering the incorporated allegations of Paragraph 137, Central incorporates the preceding admissions and denials as if fully restated.

54. Answering Paragraph 138, Central admits that it is a wholesale purchaser of power from Santee Cooper and admits that Central supplies power to its member cooperatives, including Palmetto. Any remaining allegations are denied.

55. Answering Paragraph 139, Central admits its understanding that power it supplied to its member cooperatives would be used to provide service to the member cooperatives' members. The remaining allegations of Paragraph 139 are denied.

56. Paragraphs 140 and 141 are denied as alleged.

57. Paragraph 142 is admitted to the extent it alleges that Santee Cooper's cost of service that it charges to Central continues to include costs associated with the V.C. Summer Project that should not be included. All remaining allegations are denied.

58. Answering Paragraph 143, Central admits that Santee Cooper has breached its contract with Central but denies that Central has breached a contract with any Plaintiff or member of any proposed class and denies that any Plaintiff is entitled to any recovery from Central.

59. Paragraphs 144, 145, 146, 147, 148, and 149 are denied as to Central. To the extent those Paragraphs set forth claims specific to the other Defendants, no response is required by Central.

60. Answering the incorporated allegations of Paragraph 150, Central incorporates the preceding admissions and denials as if fully restated.

61. Paragraphs 151, 152, 153, 154, 155, and 156 set forth an alleged cause of action by the Plaintiffs specific to Santee Cooper and require no response by Central.

62. Answering the incorporated allegations of Paragraph 157, Central incorporates the preceding admissions and denials as if fully restated.

63. Paragraphs 158, 159, 160, 161, 162, and 163 are denied.

64. Answering the incorporated allegations of Paragraph 164, Central incorporates the preceding admissions and denials as if fully restated.

65. Paragraphs 165, 166, 167, 168, 169, and 170 are denied as to Central. To the extent those Paragraphs set forth claims specific to the other Defendants, no response is required by Central.

66. Answering the incorporated allegations of Paragraph 171, Central incorporates the preceding admissions and denials as if fully restated.

67. Paragraphs 172, 173, 174, 175, and 176 set forth an alleged cause of action by Plaintiffs specific to the SCANA Defendants and no response is required by Central.

68. Answering the incorporated allegations of Paragraph 177, Central incorporates the preceding admissions and denials as if fully restated.

69. Paragraphs 178, 179, 180, 181, 182, 183, 184, and 185 set forth an alleged cause of action by Plaintiffs specific to the SCANA Defendants and no response is required by Central.

70. Answering the incorporated allegations of Paragraph 186, Central incorporates the preceding admissions and denials as if fully restated.

71. Paragraphs 187, 188, 189, and 190 are denied as to Central. To the extent those Paragraphs set forth claims specific to the other Defendants, no response is required by Central.

72. Answering the incorporated allegations of Paragraph 191, Central incorporates the preceding admissions and denials as if fully restated.

73. Paragraphs 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, and 203 are denied as to Central. To the extent those Paragraphs set forth claims specific to the other Defendants, no response is required by Central.

74. Answering the incorporated allegations of Paragraph 204, Central incorporates the preceding admissions and denials as if fully restated.

75. Answering Paragraph 205, Central admits only that the cited case contains the quoted language.

76. Paragraphs 206 and 207 are denied as to Central. To the extent those Paragraphs set forth claims specific to the other Defendants, no response is required by Central.

II. ADDITIONAL DEFENSES AND CROSS-CLAIMS AGAINST SANTEE COOPER

A. FACTUAL BACKGROUND RELEVANT TO ADDITIONAL DEFENSES AND CROSS-CLAIMS AGAINST SANTEE COOPER

77. Central provides total wholesale electric service to all of South Carolina's 20 retail electric cooperatives, which in turn serve over 700,000 accounts in all 46 counties of South Carolina through a distribution network totaling more than 70,000 miles of distribution line.

78. Santee Cooper is South Carolina's state-owned electric and water utility. Through its decades-long relationship with Central, Santee Cooper also generates the power distributed by the state's 20 electric cooperatives.

79. Santee Cooper is governed by and subject to the provisions of its enabling act, including S.C. Ann. §§ 58-31-10 through 58-31-220.

80. In 1980, Central entered into a Power Systems Coordination and Integration Agreement (as subsequently amended, the "Coordination Agreement") with Santee Cooper.

81. The Coordination Agreement requires Central to purchase most of its electrical power and energy requirements from Santee Cooper.

82. Under the Coordination Agreement, Santee Cooper charges Central for about 70% of Santee Cooper's capital costs.

83. In 2008, Santee Cooper and South Carolina Electric & Gas Company ("SGE&G"), a subsidiary of SCANA, agreed to construct two additional nuclear-power generating units ("Units 2 and 3" or "the Project") at the V.C. Summer plant in an arrangement under which Santee Cooper would own 45% of the Project and SCE&G would own the remaining 55%.

84. To build the new units, the Owners entered into an Engineering, Procurement, and Construction ("EPC") contract with Westinghouse Electric Company ("WEC") and Stone & Webster, a division of the Shaw Group. WEC served as the chief contractor for the Project.

85. During construction, Chicago Bridge & Iron acquired Stone & Webster, resulting in the formation of a subsidiary company known as CB&I Stone Webster ("CB&I"). WEC, together with CB&I, are collectively referred to herein as "the Consortium."

86. The agreements governing construction originally provided for Unit 2 to be completed in April 2016 and for Unit 3 to be completed in January 2019, at a combined cost of approximately $12 billion. Santee Cooper intended to pass its share of the costs associated with the construction on to its customers, including Central. Santee Cooper has charged and continues to charge Central for costs arising from the construction of Units 2 and 3.

87. In 2008, the Owners applied to the Nuclear Regulatory Commission ("NRC") for a Combined Construction and Operating License to build Units 2 and 3, and shortly thereafter entered into the EPC agreement with the Consortium.

88. By late 2009, Santee Cooper recognized that it did not need a full 45% ownership interest in the Project, a point Central pressed repeatedly. By April 2010 Central was urging Santee Cooper to reduce its ownership share in Units 2 and 3 from 45% to 5% to 15%.

89. Central continued to express these concerns, imploring Santee Cooper in October 2010 to "move as expeditiously as possible" to reduce its ownership interest "preferably to 10% or less."

90. In December 2010, Santee Cooper's CEO Lonnie Carter ("Carter") acknowledged the "absolute need to reduce our ownership from 45% to a lesser degree," stating: "[i]t is imperative that we make that happen." He explained that the initial effort would be to reduce Santee Cooper's ownership interest to 20%, but Santee Cooper would not stop there, and would seek to "move more of the power through purchased power agreements to further reduce the costs . . . ."

91. Over about a four-year period, Santee Cooper sought to reduce its ownership interest in the plant from 45% to 20%.

92. In 2012, Santee Cooper retained Energy Strategies, Inc. ("ESI") to assist in developing a marketing plan for this effort. ESI's president, Howard Axelrod, reported in 2013 that with the exception of Duke Energy, "[n]o other utility that was approached by Santee Cooper has indicated an interest in either an outright asset purchase or the execution of a long term PPA [purchase power agreement]." Axelrod explained that "[u]ntil VCS construction is complete, the plants are operating at full capacity, and all costs are known with a high degree of certainty, *it is unlikely, that any utility*, albeit with few exceptions [Duke and TVA], *would likely entertain such an asset acquisition unless the offering was significantly discounted to reflect the risks and uncertainties associated with a $10 billion ongoing nuclear construction project.*" (Axelrod reported that TVA was "in the process of re-evaluating its position on the role nuclear power will play in future generation expansion plans.")

93. Santee Cooper's discussions with Duke progressed farther than with other utilities, but those discussions came to an end in late 2013/early 2014. As predicted by Axelrod, no other utility was interested in purchasing an ownership interest in the Project.

94. The only deal Santee Cooper was able to reach was an agreement to sell a 5% interest to SCE&G in January 2014, but this came with a huge caveat: SCE&G's obligation to purchase would be triggered only if and when Unit 2 became operational. In the meantime, all the construction and cost risk of that 5% interest would remain with Santee Cooper. Consistent with Axelrod's observation about other utilities, not even SCE&G, *the Project co-owner*, was willing to take on more risk associated with the Project. Moreover, to secure this "deal," Santee Cooper had to agree that until commercial operation of Unit 3, it would be prohibited from selling any further interest in the Project without SCE&G's consent. The triggering event (commercial operation of Unit 2) never occurred, of course, and Santee Cooper thus never reduced its 45% interest in the Project.

95. While unsuccessfully attempting to sell what no other utility wanted to buy, Santee Cooper forged ahead with the Project, a project beset with fundamental problems practically from the outset.

96. One of the major problems afflicting the project was delay in the fabrication and delivery of submodules. Rather than constructing the entire facility on-site, the construction plan called for fabrication of submodules off-site, at a facility in Lake Charles, Louisiana, then shipment of the submodules to the site for assembly into modules. Problems with the submodule fabrication work began almost from the start.

97. Two of the major modules, CA20 and CA01, had Unit 2 "hook" dates of November 18, 2011 and March 29, 2013, respectively. (The "hook" date is the date the module

has been assembled and is ready to be "hooked" by the on-site crane and placed into position.) It was essential that the Consortium meet these hook dates in order to achieve the Unit 2 substantial completion date of April 1, 2016.

98. However, when the NRC attempted to inspect the module fabrication facility in January 2011, the NRC was surprised to discover that the contractor had not made enough progress to make the inspection worthwhile, and the inspection was terminated early.

99. Michael Crosby ("Crosby"), became Santee Cooper's Vice President of Nuclear Operations and Construction in October 2011. By that time, Lonnie Carter was well aware of the submodule fabrication and delivery problem, and asked Crosby to look into it.

100. The submodule problems identified in 2011 continued, and in a new schedule issued by the Consortium in August 2012, the CA20 and CA01 hook dates were delayed 14 months, to January 19, 2013 and May 28, 2014, respectively. (The Unit 2 substantial completion date was delayed by 11 months.) But module production did not improve. As of the end of September, 2012, fewer than half of the 72 CA20 submodules had been delivered to the site.

101. Crosby visited the Lake Charles facility on or about January 9, 2013. Two days later, in an email to Carter, Crosby observed that "[p]roduction work in Lake Charles is ***still in the ditch***."

102. By June 2013, the submodule delays had reached the point that the completion dates for both units had to be pushed out again: 9 to 12 months for Unit 2 and a similar delay for Unit 3.

103. Carter likewise recognized the seriousness of the submodule delays, stating in August 2013 that "[t]he Consortium's inability to deliver submodules has been ***a major source of concern and risk for this project for a long time,***" and further "that the Consortium's inability

to fulfill their contractual commitments in a timely manner ***places the project's future in danger.***"

104. In an email dated September 6, 2013, Carter and SCE&G's CEO relayed these concerns to WEC, noting that "missed deadlines [have] put ***potentially unrecoverable stress*** on the milestone schedule approved by the SC Public Service Commission." The Owners further cautioned that "continuing delays and cost overruns are unacceptable."

105. But those delays and cost overruns continued, to the point that Santee Cooper was no longer able to rely on the Consortium's module schedule. In October 2013, Carter stated that he had "***no real confidence in [the Consortium's] ability to provide modules as scheduled***" and had "***received so many new schedules that they are meaningless***."

106. On February 5, 2014, Crosby conveyed to Carter the stark assessment that "***CA01 is in the toilet***" and that meeting the CA01 schedule would take "***Divine intervention***." A month later, on March 5, 2014, he sent another email to Carter, stating that it was "***past time to end the Lake Charles Debacle***" and that "***Sub-module deliveries are going to kill the project***." (See Exhibit "A" attached hereto.)

107. As reflected in his typed meeting notes, Crosby had concluded by March 2014 that WEC officials were either incompetent or intentionally misleading the Owners regarding project delays.

108. On May 6, 2014, Carter and Marsh sent a 14-page letter to the Consortium detailing the long, troubled history of submodule schedule delays, concluding that the Consortium had "***made promise after promise, but fulfilled few of them***."

109. While significant, the submodule fabrication and delivery problem was by no means the only one afflicting the Project. The following is a list of project concerns identified by Crosby, and when he became aware of each concern:

a. Submodule fabrication and delays (2011)

b. Potential cost overruns (late 2012)

c. Voluminous work packages (2013)

d. Productivity factors (2013)

e. Craft labor ratios (2013)

f. Monthly percent complete rate (2013)

g. Project management (late 2013)

h. Late designs and design changes (Dec. 2013)

i. Ability of the Consortium to adhere to the schedule (Dec. 2013)

j. Lack of fully resource loaded integrated project schedule (Aug. 2014)

k. Schedule credibility (Aug. 2014)

110. Marion Cherry – Santee Cooper's full time, on-site representative for the Project – was also well aware of these problems. In October 2014, an SCE&G employee summarized the problems in an email involving Cherry as follows: "CBI has productivity problems in the field. Can't meet a schedule. WEC keeps changing design that impact field and shops. The shops have quality and production problems. There are a multitude of procurement issues. The field non manuals and indirects are out of control. CBI, one of the largest contractors in the universe can't find the necessary resources." Another SCE&G employee responded: "You hit the nail on the head!" Cherry's response: "Amen, brothers!"

111. In December 2013, the Consortium promised the Owners a new schedule, and finally delivered it in August 2014. The new schedule, which called for substantial completion of Unit 2 in June 2019 and Unit 3 in June 2020, was promptly recognized by the Owners as neither credible nor achievable. For example, in an August 5, 2014, email forwarded to Cherry, an SCE&G employee declared that the "***schedule is a joke***" and stated that "[s]omeone should be fired for thinking this would be acceptable to us."

112. Lonnie Carter, in a September 8, 2014, email to SCE&G's CEO, bluntly stated: ***"[M]y sense is that neither the Owners nor the Consortium have any real confidence that the proposed rollout schedule that the Consortium shared with the Owners on August 1st is achievable. I am concerned that we have become tied to artificial dates, both past and future, often driven by disclosure considerations.***" (See Exhibit "B" attached hereto.)

113. In a January 7, 2015, email to Carter, Crosby summarized a meeting between the Owners and the Consortium wherein the Owners expressed a total lack of confidence in the new schedule. In fact, Crosby stated that he and Steve Byrne (an executive with SCE&G) had "pummeled" the Consortium over this issue:

> **Schedule … for some reason (?) Jeff Benjamin probed the Owner's confidence in the June 2019 – June 2020 schedule … and got pummeled by both Byrne and Crosby.**
>
> - **We both cited poor supplier performance, poor site execution (performance factor) and questionable assumptions in the schedule logic … namely, the Shield Building erection plan.**

114. But while Carter was lamenting that the Owners had become tied to "artificial dates," and had no real confidence in the Consortium's schedule, and while Crosby was pummeling a WEC executive when he questioned the Owners' lack of confidence in that

schedule, Santee Cooper was telling the public a different story. In its 2014 Annual Report, which was made available in about April 2015 and sent to the Governor and other government officials in May, 2015, Santee Cooper reported that the Owners had evaluated the schedule received from the Consortium in early August, 2014, and that

> [b]ased upon this evaluation, the Consortium has indicated that the Unit 2 substantial completion date is expected to occur by June 2019 and the substantial completion date of Unit 3 may be approximately 12 months later. SCE&G and the Authority are continuing discussions with the Consortium executive management in order to identify potential mitigation strategies to accelerate the substantial completion dates of the units and are working to arrive at an acceptable schedule and cost estimate.

115. Thus, while acknowledging internally its complete lack of confidence that the Consortium's schedule could be met, Santee Cooper reported precisely that schedule in its Annual Report—and then misled the public even further by suggesting that the June 2019 – June 2020 dates might be *accelerated*.

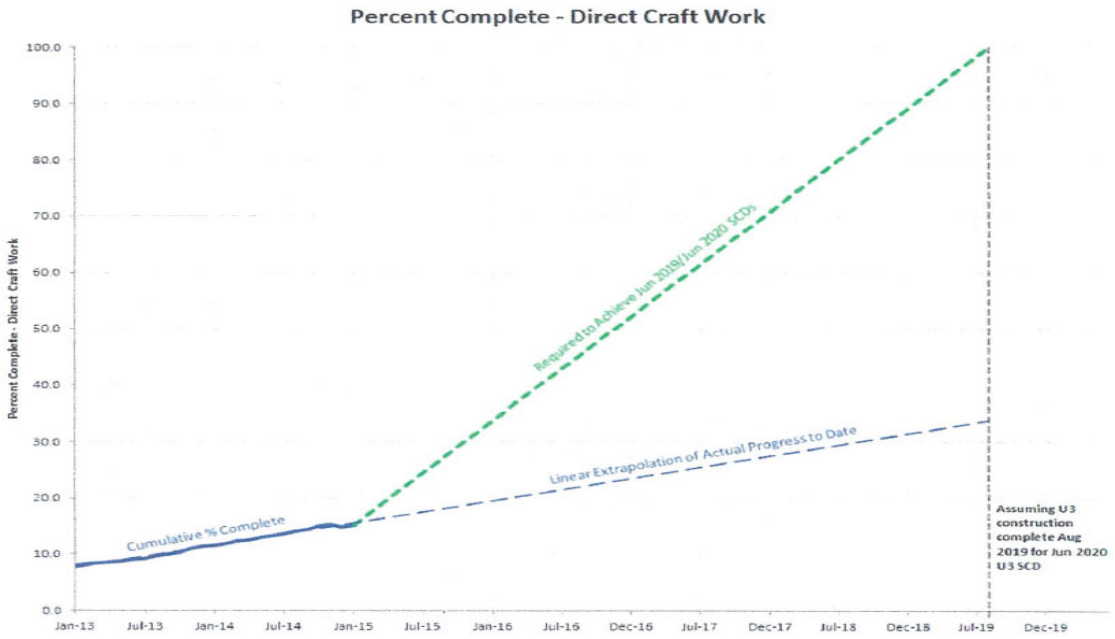
116. An obvious flaw in the August 2014 schedule was that it was based on unrealistic productivity factors and other metrics. For example, the August 2014 schedule assumed a productivity factor (PF) of 1.15. A productivity factor is a ratio of actual to earned hours on a project. A productivity factor of 1.0 is the goal; a productivity factor of 2.0 means it took twice as long to accomplish a unit of work as planned.

117. Within a matter of months after issuance of the August 2014 schedule, it was obvious the Consortium was not coming close to achieving a PF of 1.15. In January, Cherry calculated that during the five months immediately following issuance of the new schedule, the average monthly PF was an abysmal 2.27.

118. The slow rate of progress made it abundantly clear that the Project would not be completed on time or on budget. In April 2015, Crosby and Cherry prepared graphs and charts

clearly showing this. In one graph, they depicted the "total target cost impact of the Consortium's poor management of productivity and labor ratios." Two scenarios were run using PF and labor ratios that were significantly better than the actual numbers achieved by the Consortium over the five months that had elapsed since issuance of the August 2014 schedule. Each scenario showed ***"cumulative target costs that are significantly over budget."*** Omitted from the graph was a scenario using an average of the actual numbers recorded on the project during that five-month period. Crosby explained that this scenario ***"is not shown on the graph because it would be off the chart."*** Thus, Santee Cooper was well aware that even if productivity at the Project improved significantly, the total costs of the Project would be substantially higher than the public cost estimate. And Santee Cooper knew that if progress continued at the current rate, the total costs of the Project would be "off the chart."

119. In another April 2015 chart, Cherry depicted the Project's percent complete based on "direct craft," i.e., the people actually doing the work. This striking chart is reprinted below.



120. The chart reveals that at the current rate of progress, Unit 2 would be only about *35% complete in the summer of 2019,* and to meet the required June 2019 substantial completion date, the rate of progress would have to soar to wholly unrealistic heights never seen on the Project.

121. By June 2015, Santee Cooper not only knew that the June 2019 and June 2020 dates were completely unrealistic, but expressed "little confidence" that Unit 3 would be completed by the end of 2020. This was critical, because the units had to be in service by January 1, 2021, in order for SCE&G to receive approximately $2.2 billion in federal "production tax credits," a critical assumption underlying the economics of the Project. Santee Cooper recognized that because of the dismal pace of construction, those tax credits were "in jeopardy."

122. In the summer of 2015, the Owners secretly retained Bechtel Power Corporation to conduct an independent assessment of the Project. Bechtel has substantial experience designing and constructing nuclear-fueled power plants.

123. In October 2015, Bechtel presented its initial findings to the Owners and delivered a comprehensive draft report in November 2015.

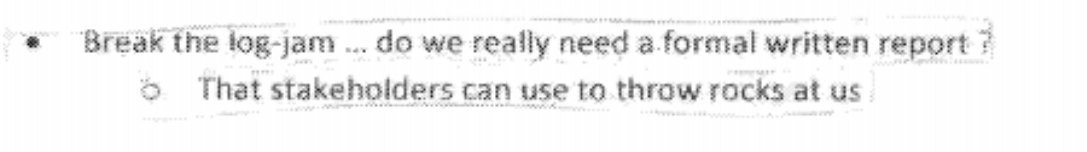
124. The draft report contained a number of highly critical conclusions about the Project, its "challenges," and various failures of Santee Cooper and SGE&G.

125. A key conclusion—in fact, the first conclusion set forth in the Executive Summary—was that "the current schedule is at risk." Bechtel explained that "[t]he to-go scope quantities, installation rates, productivity, and staffing levels all point to project completion later than the current forecast." Bechtel concluded that the Unit 2 and Unit 3 commercial operation dates (CODs) would be delayed as follows:

Impacts on Commercial Operation Dates		
	Unit 2	Unit 3
Current COD	June 2019	June 2020
Adjustment	18 to 26 months	24 to 36 months
New COD	Dec 2020 to Aug 2021	June 2022 to June 2023

126. Although Crosby did not see "any real surprises" in Bechtel's finding, he found the projected commercial operation dates "sobering."

127. The Owners were concerned about Bechtel's findings being made public. Crosby's notes from a January 2016 meeting show Santee Cooper even questioned the need for a final written report that might be used to "throw rocks" at the Owners.



128. Eventually, Bechtel's schedule projection was deleted from the final report. Nevertheless, even the watered-down Bechtel report identified numerous major issues affecting the project, including the following:

a. The project contractors' plans and schedules are "not reflective of actual project circumstances," and their project forecasts do "not have a firm basis."

b. The contractors "lack the project management integration needed for a successful project outcome."

c. There is a "lack of shared vision, goals, and accountability between the Owners" and the contractors.

d. The necessary detailed engineering design is "not yet completed."

e. The "issued design is often not constructible."

f. "Construction productivity is poor for various reasons including changes needed to the design, sustained overtime, complicated work packages, aging workforce, etc."

g. The "oversight approach taken by the Owners does not allow for real-time, appropriate cost and schedule mitigation."

h. And the "Owners do not have an appropriate project controls team to assess/validate" the contractors' "reported progress and performance."

129. Bechtel further concluded that "the V.C. Summer Units 2 & 3 project suffers from various fundamental [engineering, procurement, and construction] and major project management issues that must be resolved for project success."

130. Bechtel confirmed what Santee Cooper already knew – the Project was in dire shape. Nevertheless, the Owners forged ahead with construction. Unsurprisingly, matters did not improve.

131. In March 2016, just a month after the final Bechtel report was issued, Crosby candidly assessed the state of the Project, concluding among other things that:

- "We don't drive accountability of the Consortium."
- "Schedule – if it's not well vetted and achievable
  - It's misleading and quite frankly deceptive."
- "Owners do not independently measure the Consortium's work
  - We depend on the Consortium to measure, manage and report
    - Not competent
    - Not transparent
    - Marketing specialists … not EPC managers
    - ***End of the day ... no one is accountable."***
- ***"As Owners ... we are simply holding on ... hoping and trusting the Consortium will one day pull it all together."***

- "Seven years later . . .
  - Engineering is not complete
    - No one on our team can tell us . . . just how incomplete it is.
    - ***We simply parrot what they tell us … hope for better times"***
  - "Procurement ... has devastated the critical path"
  - ***"Construction … is off the chart poor***
    - Engineering continues to be the problem
    - ***11% … over the last 36 months***
      - ***That pace says we complete 2038***
        - ***We seem to be indifferent to it***

(See Exhibit "C" attached hereto.)

132. Notwithstanding Crosby's stunning conclusions, Santee Cooper continued to pour money into the Project for almost two more years before it was finally abandoned in July 2017.

133. In late 2015, Santee Cooper and SCE&G negotiated a fixed-price option with the Consortium, which was supposed to shift all the risk to the Consortium. But that was hardly the case. Before the fixed price option was exercised in November 2016, Santee Cooper was well aware that WEC was having substantial financial difficulty and could declare bankruptcy. In fact, in March 2016, Crosby zeroed in on this risk, pointedly asking: "Does the exercise of the Fixed Price Option make it more likely that Westinghouse will pursue a strategic bankruptcy in order to have the bankruptcy court reject the EPC Agreement?"

134. Notwithstanding the known risk of Westinghouse declaring bankruptcy and the myriad problems plaguing the Project, Santee Cooper and SCE&G entered into the fixed price contract in November 2016. Shortly thereafter, the risk identified by Crosby befell the Project. In March 2017, Westinghouse declared bankruptcy and stated that it would not finish construction of Units 2 and 3 under the fixed-price contract. Any supposed benefit of the fixed price contract thereby completely evaporated.

135. The emails, letters, etc., described above tell the indisputable story of a project beset almost from the beginning with myriad fundamental, entrenched problems that led inexorably to major delays and cost overruns. Yet, it was a story Santee Cooper kept largely to itself. With the exception of the letters exchanged between Calcaterra and Carter in 2010, none of the emails, letters, notes, charts, graphs, reports, and other documents described above were shared with Central. This includes the Bechtel assessment. Santee Cooper told Central nothing about that assessment after receiving it in November 2015, and when Central learned about it in late 2016 and expressly requested a copy, Santee Cooper denied the request. Only after the Project was abandoned in July 2017 did the true, alarming facts about the Project start coming out. Until then, Central, like so many others, was kept in the dark.

136. To cite just a few examples, Central was not informed that submodule fabrication at Lake Charles was "still in the ditch" in February 2013; that in March 2014, Crosby concluded that "[i]t's past time to end the Lake Charles debacle" and that "sub-module deliveries are going to kill the project"; that in April 2014, Santee Cooper and SCE&G had informed the CEOs of WEC and CB&I that they were either "incompetent or intentionally misleading" the Owners; that in September 2014, Santee Cooper's CEO did not have "any real confidence that the proposed rollout schedule that the Consortium shared with the Owners on August 1st [was] achievable" and concluded that the Owners had "become tied to artificial dates . . . often driven by disclosure considerations"; that in June 2015, Santee Cooper had determined that "the Consortium has little credibility ... for developing a realistic cost estimate"; and that in March 2016, construction was "off the chart poor," that at the current pace, construction would not be complete until 2038, as to which the Owners were seemingly "indifferent," and that Santee Cooper was "simply holding on . . . hoping and trusting the Consortium will one day pull it all

together." Santee Cooper officials candidly discussed all this and much more among themselves and with SCE&G, but concealed these facts from Central and the public.

137. On July 31, 2017, Santee Cooper issued a press release announcing the Directors' decision to suspend construction of Units 2 and 3. SCE&G issued a similar press release on the same day. Santee Cooper's July 31 press release explained that Santee Cooper had spent approximately $4.7 billion in construction and interest to date and that finishing the Project would end up costing Santee Cooper a total of $11.4 billion.

138. Units 2 and 3 never entered service, were never used or usable by Santee Cooper, SCE&G, or anyone else, and will provide no benefit to Santee Cooper's customers, including Central.

139. Notwithstanding the abandonment of Units 2 and 3, Santee Cooper has continued to charge Central for costs associated with the construction of those units.

B. ADDITIONAL DEFENSES TO FIFTH AMENDED CLASS ACTION COMPLAINT

FOR A SECOND DEFENSE OR AFFIRMATIVE DEFENSE
(Negligence of Others)

140. Central is not directly, vicariously, or otherwise liable for any acts or omissions of SCE&G, Santee Cooper, or Santee Cooper's board of directors regarding the design, construction, or abandonment of the V.C. Summer Project or the rates charged as a result of the V.C. Summer project and cannot be held liable for the acts or omissions of those parties.

FOR A THIRD DEFENSE OR AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

141. Any alleged damages claimed to be sustained by Plaintiffs and the putative class relating to the design, construction, or abandonment of the V.C. Summer Project were

occasioned and proximately caused solely by the acts or omissions of other parties over whom Central had no supervision or control, and therefore Central cannot be held liable to Plaintiffs and the putative class for any alleged damages sustained by Plaintiffs by reason of those alleged acts or omissions.

FOR A FOURTH DEFENSE OR AFFIRMATIVE DEFENSE
(Statute of Limitations)

142. Plaintiffs' claims and those of the putative class are barred in whole or in part by the applicable statutes of limitation and any applicable statute of repose.

FOR A FIFTH DEFENSE OR AFFIRMATIVE DEFENSE
(Economic Loss Rule)

143. The cause of action by Plaintiffs and the putative class for negligence against Central is barred by the economic loss rule because the damages sought to be recovered are economic.

FOR A SIXTH DEFENSE OR AFFIRMATIVE DEFENSE
(Lack of Privity)

144. Because Plaintiffs and the putative class have no contractual or other legal relationship with Central, Plaintiffs' claims against Central and those of the putative class against Central are barred because of a lack of privity.

FOR A SEVENTH DEFENSE OR AFFIRMATIVE DEFENSE
(Lack of Standing)

145. Plaintiffs and the putative class lack standing to sue Central.

FOR AN EIGHTH DEFENSE OR AFFIRMATIVE DEFENSE
(No Unjust Enrichment)

146. As a non-profit entity, Central retains only sufficient money to cover its costs and to meet its capital requirements.

147. Because Central has paid to Santee Cooper rates for power as established by Santee Cooper, Central has not been enriched by the reimbursement of those costs from its member cooperatives.

FOR A NINTH DEFENSE OR AFFIRMATIVE DEFENSE
(Rule 12(b)(6))

148. The Third Amended Complaint fails to state facts sufficient to constitute a cause of action pursuant to which punitive damages, treble damages, or costs could be awarded, or any other relief granted, against Central.

C. CENTRAL'S CROSS-CLAIMS AGAINST DEFENDANT SANTEE COOPER

1. NATURE OF CROSS-CLAIMS

149. Central seeks a declaration that Santee Cooper, which owns 45% of the abandoned nuclear generating units at V.C. Summer, lacks statutory authority to impose on its customers charges related to the failed V.C. Summer Project, and further seeks a declaration of Central's rights and Santee Cooper's contractual obligations with respect to improper charges that Santee Cooper has imposed and intends to impose on Central, as well as a constructive trust on a lump sum payment received by Santee Cooper. In addition to Central's cross-claims against Santee Cooper, Central further seeks statutory relief against Santee Cooper's individual directors solely in their capacity as directors.

2. PARTIES AND JURISDICTION

150. Central is a South Carolina non-profit corporation with headquarters located in Columbia, South Carolina. Central is not subject to the jurisdiction of the South Carolina Public Service Commission or the Base Load Review Act, S.C. Code Ann. §§ 58-33-210 through 58-33-298.

151. Santee Cooper is a public authority of the State of South Carolina, a body corporate and politic, with the power to sue and be sued, and with a principal office in the town of Moncks Corner near the Santee Cooper power dam and navigation locks in Berkeley County.

152. William Finn, Barry Wynn, Kristofer Clark, Merrell W. Floyd, J. Calhoun Land IV, Stephen H. Mudge, Peggy H. Pinnell, Dan J. Ray, and David F. Singleton are the directors of Santee Cooper. These individual parties are collectively referenced as "Directors".

153. The parties are subject to the jurisdiction of this Court.

154. Venue is proper in this Court.

155. The Court has subject-matter jurisdiction over the claims in this action.

3. INCORPORATION OF FACTUAL ALLEGATIONS

156. The preceding factual allegations set forth in Paragraphs 77 through 139 of Section II. A. "FACTUAL BACKGROUND RELEVANT TO ADDITIONAL DEFENSES AND CROSS-CLAIMS AGAINST SANTEE COOPER" are incorporated by reference into each individual claim for relief below as if fully restated within each claim for relief.

4. CLAIMS FOR RELIEF

COUNT ONE
Declaratory Judgment—Breach of Statutory Duties
(Santee Cooper)

157. Central seeks a declaration of Santee Cooper's statutory authority under South Carolina law, and enforcement of that authority as declared by the Court. This case presents a justiciable controversy, and Central is entitled to have determined questions of construction arising under the statutes at issue and to obtain a declaration of rights, status, or other legal relations thereunder in accordance with the Uniform Declaratory Judgments Act,

S.C. Code Ann. §§ 15-53-10 through 15-53-140.

158. Because Santee Cooper is a creature of statute, Santee Cooper's powers are enumerated and limited by statute.

159. S.C. Code Ann. § 58-31-30 subsections (A)(7) and A(13) expressly impose the "used and useful" test on Santee Cooper's ability to include costs for facilities in rates charged to its customers. Accordingly, while Santee Cooper has statutory authority to build and maintain facilities for the manufacture, distribution, purchase, and sale of power, and has authority to impose charges for the use of those facilities, Santee Cooper has no authority to collect charges for facilities that are *not* used or useful, for services that are *not* rendered, or for commodities that are *not* furnished.

160. Because Santee Cooper and SCE&G have abandoned the V.C. Summer Project and the construction of V.C. Summer Units 2 and 3, those facilities will not be used and useful, and Santee Cooper will not render any services or furnish any commodities in connection with those facilities.

161. Thus, Santee Cooper has exceeded its statutory authority and violated South Carolina law by imposing and collecting charges related to the V.C. Summer Project and the construction of the abandoned V.C. Summer Units 2 and 3. As a creature of statute, Santee Cooper has only those rights granted by statute, and its attempt to charge Central for the abandoned project is *ultra vires* and unlawful.

162. Additionally, at all times relevant to this Cross-Claim, S.C. Code Ann. § 58-31-55 required Santee Cooper to provide generation, transmission, and distribution services to its wholesale and retail customers "at just and reasonable rates."

163. Under settled rate-making principles applicable to Santee Cooper, it may not recover from ratepayers the costs associated with facilities that are not used and useful and/or that have been abandoned before completion.

164. V.C. Summer Units 2 and 3 have been abandoned, and such units are not, and will not be, used and useful.

165. Thus, it is unjust and unreasonable, and a violation of its statutory duties, for Santee Cooper to impose on ratepayers rates that include costs associated with Units 2 and 3.

166. Central is entitled to a declaration that Santee Cooper has exceeded its statutory authority and violated South Carolina law by imposing and collecting rates that include costs associated with the V.C. Summer Project and the abandoned V.C. Summer Units 2 and 3.

167. In the alternative, even if Santee Cooper were not required to exclude from rates all costs associated with the abandoned units, a substantial portion of such costs, in an amount to be determined at trial, should be excluded because inclusion of such costs in the rates to ratepayers would not be just or reasonable.

168. Thus, in the alternative, Central is entitled to a declaration that Santee Cooper has exceeded its statutory authority and violated South Carolina law by imposing and collecting unjust and unreasonable rates related to the V.C. Summer Project and the construction of the abandoned V.C. Summer Units 2 and 3.

COUNT TWO
Breach of Contract
(Santee Cooper)

169. Central seeks a declaration of its rights and Santee Cooper's duties under the

Coordination Agreement, and enforcement of those rights and duties. This case presents a justiciable controversy, and Central is entitled to have determined questions of construction arising under the contract at issue and to obtain a declaration of rights, status, or other legal relations thereunder in accordance with the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 through 15-53-140.

170. The Coordination Agreement between Santee Cooper and Central is a binding and enforceable contract under which Central has performed its obligations.

171. In addition to violating South Carolina law by imposing rates and charges related to the V.C. Summer Project and the construction of the abandoned V.C. Summer Units 2 and 3, as set forth in Count One, Santee Cooper has breached the Coordination Agreement.

172. Permissible rates and charges for Central's purchases from Santee Cooper under the Coordination Agreement are derived from an annual "Cost of Service Study."

173. The annual Cost of Service Study is based on Santee Cooper's "revenue requirements," which are defined as ''those annual costs of a utility (in this case, [Santee Cooper]) that are *reasonably* recovered through rates and charges to [Santee Cooper's customers] for *"service* during a given period." (Sec. I. A. of Appx. E to May 20, 2013 Amendment to Coordination Agreement) (emphasis added).

174. Because the V.C. Summer Project was abandoned, V.C. Summer Units 2 and 3 are not providing and will not provide *any* service to Central, and the Coordination Agreement does not permit Santee Cooper to recover costs associated with such units from Central. In charging such costs to Central, Santee Cooper has breached and continues to breach the Coordination Agreement, including the implied covenant of good faith and fair dealing, and Central is entitled to a

declaration to that effect.

175. Additionally, because the abandoned Units 2 and 3 are not and will not be used or useful, the costs associated with those units may not *reasonably* be recovered from Central. In charging such costs to Central, Santee Cooper has breached and continues to breach the Coordination Agreement.

176. In the alternative, even if Santee Cooper were not required to exclude from rates all costs associated with the abandoned units, a substantial portion of such costs, in an amount to be determined at trial, cannot "reasonably" be recovered from Central. In charging such costs to Central, Santee Cooper has breached and continues to breach the Coordination Agreement, including the implied covenant of good faith and fair dealing, and Central is entitled to a declaration to that effect.

177. Central is entitled to such further relief as is necessary or proper to ensure that Central is compensated for any past improper charges and to prevent Santee Cooper from imposing any future charges related to the V.C. Summer Project or V.C. Summer Units 2 and 3.

178. Central is also entitled to such further relief as is necessary or proper to prevent Santee Cooper from imposing any future unjust and unreasonable rates related to the V.C. Summer Project or V.C. Summer Units 2 and 3.

179. In addition, pursuant to Art. II.B.1 of the Coordination Agreement, Santee Cooper was obligated to "exchange [with Central] information and studies and analyses relating to matters involving generation and transmission planning …."

180. The Coordination Agreement also requires Santee Cooper to "cooperate and coordinate [with Central] with respect to the joint planning of future Resources"—a process that

involves "Preliminary Assessments" based on "System Load Forecasts," "Generation Expansion Plans," and the "Planned Retirement" of any "Shared Resources" (including V.C. Summer Units 2 and 3) that may no longer be necessary to meet system needs. (Art. IV of May 20, 2013 Amendment to Coordination Agreement). This process also included review of whether existing generation plans should be modified.

181. As part of this process, the parties were to work "cooperatively and in good faith" and "collaboratively." Also, Santee Cooper was obligated to "regularly share with Central . . . information in its possession or control which [Santee Cooper] reasonably believes is material to the development of the Generation Expansion Plan."

182. Pursuant to its express and implied duties under Article IV, Santee Cooper was obligated to provide material information to Central regarding the V.C. Summer Project.

183. Santee Cooper failed to provide material information to Central regarding the V.C. Summer Project. For example, Santee Cooper did not disclose either the First or Final Bechtel Reports to Central. Thus, Central did not know that in November 2015, Bechtel had concluded that the projected commercial operation dates would be delayed by 18 to 26 months for Unit 2 and 24 to 36 months for Unit 3, which would add significantly to overall project costs.

184. Nor was Central informed about other problems known by Santee Cooper and identified by Bechtel with respect to the V.C. Summer Project.

185. Santee Cooper thwarted the parties' joint planning process and breached its duties under Articles II and IV, as well as the implied covenant of good faith and fair dealing, by failing to provide to Central information, studies, and analyses that were material to the V.C. Summer Project and the parties' joint generation planning.

186. These breaches deprived Central of the full benefit of its contractual rights, including with respect to joint generation planning, Preliminary Assessments, Generation Expansion Plans, and the potential Planned Retirement of V.C. Summer Units 2 and 3. Central is entitled to a declaration to that effect and to such relief as is necessary or proper to ensure that Central is compensated for any past improper charges and to prevent Santee Cooper from imposing future charges related to the V.C. Summer Project.

187. Santee Cooper further breached its duties under Article IV by failing to engage in good faith joint generation planning with Central. Central is entitled to a declaration to that effect and to such relief as is necessary or proper to ensure that Central is compensated for any past improper charges and to prevent Santee Cooper from imposing future charges related to the V.C. Summer Project.

COUNT THREE
Constructive Trust—Toshiba Payment and Citibank Payment
(Santee Cooper)

188. When it became apparent Westinghouse could not fulfill its obligations, Santee Cooper and SCE&G pursued claims against Toshiba Corp. ("Toshiba"), the parent entity of Westinghouse.

189. Santee Cooper and SCE&G entered an arrangement with Toshiba whereby Toshiba agreed to pay Santee Cooper and SCE&G a total sum of $2.168 billion ("Toshiba Payment") over a fixed period of time.

190. Santee Cooper and SCE&G split the monetary guarantee from Toshiba according to their respective percentages of ownership, with Santee Cooper to receive 45 percent ($976 million) and SCE&G to receive 55 percent ($1.19 billion).

191. Santee Cooper subsequently entered an arrangement with Citibank to sell its rights to the Toshiba Payment stream for a discounted lump sum cash payment in the amount of $831.2 million ("Citibank Payment"), which payment has been paid to Santee Cooper by Citibank.

192. Santee Cooper's conduct with respect to the V.C. Summer Project as set forth in these Cross-Claims and the circumstances pursuant to which Santee Cooper received the Citibank Payment render it inequitable for Santee Cooper to retain the Citibank Payment, which should instead be allocated to Santee Cooper's customers in an amount proportional to the percentage of Santee Cooper's capital costs borne by the customers.

193. Central is Santee Cooper's largest customer, and through the rates it pays to Santee Cooper, Central bears approximately 70% of Santee Cooper's capital costs.

194. This Court should impose a constructive trust on the Citibank Payment and order Santee Cooper to pay to Central 70% of the discounted lump sum payment received by Santee Cooper from Citibank, with such payment to be distributed by Central to its member cooperatives.

COUNT FOUR
Breach of Statutory Duties
(Directors)

195. This Cross-Claim is brought against the Directors solely in their official capacities as directors.

196. Central is a wholesale customer of Santee Cooper and has standing to bring this claim under S.C. Code Ann. § 58-31-57.

197. At all times relevant to this Cross-Claim, S.C. Code Ann. § 58-31-55 required the

Directors to ensure that Santee Cooper provide generation, transmission, and distribution services to its wholesale and retail customers "at just and reasonable rates."

198. The inclusion of costs associated with Units 2 and 3 in rates charged to Central is not just and reasonable.

199. Central is entitled to a declaration that the imposition and collection of rates that include costs associated with the V.C. Summer Project and the abandoned V.C. Summer Units 2 and 3 does not comport with S.C. Code Ann. § 58-31-55.

200. In the alternative, Central is entitled to a declaration that, even if all costs associated with the abandoned units were not required to be excluded from Santee Cooper's rates, a substantial portion of such costs, in an amount to be determined at trial, should be excluded because they are not just and reasonable.

201. Central is entitled to such further relief, including equitable relief under S.C. Code Ann. § 58-31-57, as is necessary or appropriate to prevent Santee Cooper from imposing any future charges related to the V.C. Summer Project or V.C. Summer Units 2 and 3.

COUNT FIVE
Contractual Indemnification
(Santee Cooper)

202. Under Art. XIV.K of the Coordination Agreement, Santee Cooper agreed to indemnify and hold Central harmless from any and all legal and other expenses, suits, claims, damages, costs, fines, penalties, liabilities or other obligations of whatsoever kind, resulting from or connected with Santee Cooper's performance under the Coordination Agreement, including but not limited to any act or omission of Santee Cooper's officers, employees, and agents.

203. The claims asserted by Plaintiffs against Central in this action result from or are connected with Santee Cooper's performance under the Coordination Agreement, including the acts and omissions of Santee Cooper's officers, employees, and agents.

204. Central is entitled to full contractual indemnification from Santee Cooper for all expenses, damages, costs, or other obligations incurred by Central as a result of Plaintiffs' claims.

III. JURY DEMAND

Central demands a trial by jury on all issues so triable.

IV. PRAYER FOR RELIEF

Central therefore prays for the following relief:

(a) For Plaintiffs' Fourth Amended Complaint to be dismissed with respect to Central;

(b) Declaratory Judgment against Santee Cooper as specified in Count One of Central's Cross-Claims;

(c) Compensation and additional relief as to Santee Cooper as specified in Count Two of Central's Cross-Claims

(d) Imposition of a constructive Trust as to Santee Cooper as set forth in Count Three of Central's Cross-Claims;

(e) Declaratory and additional relief as to the Directors as specified in Count Four of Central's Cross-Claims;

(f) An order requiring Santee Cooper to indemnify Central for all expenses, damages, costs, or other obligations incurred by Central as a result of Plaintiffs' claims;

(g) Declaratory and further necessary or proper relief;

(h) An award of Central's recoverable expenses of litigation from Santee Cooper; and

(i) Such other and further relief as this Court deems just and proper with respect to Plaintiff's Complaint and Central's Cross-Claims against Santee Cooper and the Directors.

s/ Frank R. Ellerbe, III

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