STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	CASE NO. 2019-CP-23-06675 **CLASS COUNSEL'S APPLICATION FOR REIMBURSEMENT OF EXPENSES AND A CONTINGENCY FEE AWARD**

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I. INTRODUCTION

After two and a half years of litigation that produced an unprecedented result, Class Counsel respectfully move to recover their costs and receive a contingency fee of 15% of the common fund recovery. Counsel overcame numerous procedural, discovery, and substantive hurdles in achieving this extraordinary settlement. They succeeded where litigants in other states had failed when challenging a utility's nuclear construction decisions.

The requested 15% fee is extremely reasonable. Put in perspective, it is:

1. Less than the typical percentage fee award in many similar class actions;[1]

2. Less than South Carolina Electric & Gas ("SCE&G") paid its top executives from 2008 – 2017 while they (mis)managed the nuclear project;[2] and

3. Less than Santee Cooper's annual nuclear finance charge to the Class during several of the years of construction.[3]

II. SUMMARY OF THE NUCLEAR DEBACLE

To understand the magnitude of the effort Counsel put forth for Santee Cooper's customers, it is helpful to review how these customers were victimized by a decade of Defendants' decisions.

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[1] See infra § IV(D).

[2] The requested fee is approximately $77.8 million based on the common fund's present cash value of $519 million. See infra p. 43 note 58. From 2008 – 2017, SCE&G paid its top five executives $123,445,335 in total compensation. Affidavit of Greg Galvin, ¶ 4. Exh. 1.

[3] In 2014, Santee Cooper charged the Class $85,760,244 in finance charges; in 2015, it charged $112,324,621; in 2017, it charged $102,923,400; and in 2018, it charged $79,544,324. Affidavit of John Alphin, ¶ 3. Exh. 2.

In April 2007, SCE&G's lobbyists helped secure passage of the statute that fostered the nuclear debacle – the Base Load Review Act ("BLRA"). The BLRA became effective on May 3, 2007 and allowed SCE&G to charge customers in advance for nuclear construction project financing costs. The BLRA shifted the economic risk of such projects from the company to its customers.

Having secured the ability to charge its own customers in advance for nuclear construction, SCE&G went looking for a partner to share the enormous costs of any new nuclear project. It convinced the state-owned South Carolina Public Service Authority ("Santee Cooper") to enter into a joint venture. Under their agreement, SCE&G would own 55% of the project, while Santee Cooper would own 45%. SCE&G would act as the managing partner.

On May 27, 2008, SCE&G and Santee Cooper announced plans for a $9.8 billion nuclear expansion project at the V.C. Summer plant in Fairfield County (the "Project"). Unlike SCE&G, which had to have its rates approved by the South Carolina Public Service Commission ("PSC"), Santee Cooper was free to set its own rates to fund the Project. And set those rates it did. Over the next eleven years, Santee Cooper collected over $700 million in advance financing charges for a project whose costs were ballooning out of control.

On July 31, 2017, the balloon burst. Santee Cooper's customers were shocked when both companies announced they were abandoning the Project. Having already been charged hundreds of millions of dollars in financing costs, Santee Cooper's customers were facing the prospect of paying billions more to retire the debt Santee Cooper had taken on during construction.

While the Project's abandonment surprised Santee Cooper's customers, the joint venturers had known of this looming prospect for years. By maintaining a publicly positive outlook to regulators, investors, and legislators, the companies were able to keep the Project alive while their executives pocketed "performance" bonuses and retired with "golden parachutes." But, as internal documents revealed, the Project had long spiraled out of control, fallen years behind schedule, and incurred billions of dollars in cost overruns. This unprecedented legal, economic, and political debacle spawned the largest and most complex series of utility lawsuits in South Carolina history.

When SCE&G and Santee Cooper announced their decision to abandon the Project, they did not expect that a dedicated group of lawyers would join forces to prevent the utilities from avoiding responsibility for the debacle. With a herculean effort lasting over two and a half years, these lawyers exposed Defendants' conduct and forced them to face reality. As a definite trial date approached, Defendants began serious efforts to resolve the litigation. After intensive, Court-supervised negotiations, the parties reached a settlement that provides a substantial cash payment and structural relief that will remove a significant portion of the Santee Cooper project costs from its customers' bills for years to come.

III. HISTORY OF THE LITIGATION

A. The Class Actions Begin

Within weeks of the July 31, 2017 Project abandonment, Class Counsel filed two lawsuits against Santee Cooper: Cook and Kolbe.[4] The complaints alleged tort, contract,

[4] Cook v. South Carolina Public Service Authority, No. 2017-CP-25-348 (Hampton Cty. Ct. Com. Pl., filed Aug. 22, 2017) and Kolbe v. South Carolina Public Service Authority, No. 2017-CP-08-2009 (Berkeley Cty. Ct. Com. Pl., filed Aug. 23, 2017).

statutory, constitutional, and equitable claims arising out of Santee Cooper's involvement in the Project. Shortly thereafter, Cook and Kolbe counsel amended their complaints to add SCE&G and SCANA as defendants.[5]

Counsel undertook both cases on a contingency fee basis, assuming all the risk if they were unsuccessful. With no guarantee of compensation, Counsel prosecuted the litigation for two and a half years, investing thousands of hours and over a million dollars. They worked without hesitation on behalf of Santee Cooper's customers, even though lawyers in other states had failed in similar litigation. Counsel knew they would be facing powerful adversaries with nearly limitless resources, represented by able defense lawyers well-versed in the subject matter.

Over the next thirty months, as detailed below, Class Counsel fought tenaciously against Santee Cooper's and SCE&G's vigorous defense to fashion a strong legal basis for unprecedented relief.

B. Defendants Attempt a Quick Kill

In an effort to derail the litigation before discovery could uncover damaging facts, Defendants moved to dismiss all claims in October 2017. SCE&G had filed a similar motion in the parallel case involving its customers, Lightsey v. South Carolina Electric & Gas Co., No. 2017-CP-25-335 (Hampton Cty. Ct. Com. Pl., filed Aug. 14, 2017).

The South Carolina Supreme Court assigned the Honorable John C. Hayes, III to oversee all customer claims litigation arising out of the Project. In January 2018, Judge

[5] Although the Cook Class also sued Central Electric Power Cooperative, Inc. and Palmetto Electric Cooperative, Inc. because they were in Santee Cooper's electricity distribution chain, the core of the Class claims was directed at Santee Cooper and SCE&G who were jointly building the Project.

Hayes heard an SCE&G motion to dismiss in one of the utility cases. While Judge Hayes had the matter under consideration, Santee Cooper moved on February 2, 2018 to delay the parallel litigation against it by filing a motion for a stay of discovery until the Court could hear its motion to dismiss.

On March 2, 2018, Judge Hayes denied the SCE&G motion to dismiss and ordered that his ruling would apply to the Santee Cooper litigation. SCE&G attempted to appeal Judge Hayes' now multi-case order to the South Carolina Court of Appeals. Class Counsel vigorously opposed that appeal, and were successful in having the appeal dismissed.

C. Class Counsel Join Forces for the Customers

It very quickly became clear to Class Counsel that Defendants' accomplished lawyers planned to use any available means to delay their clients' disclosure of damaging information. Counsel for Cook and Kolbe realized that litigating with such formidable adversaries over novel theories required strength and coordination. Accordingly, they combined forces, created an organizational structure, and moved to amend the Cook complaint and consolidate Kolbe into Cook. On March 23, 2018, the Court granted the motion to consolidate. Four days later, Cook filed a Fourth Amended Complaint alleging eleven causes of action against Santee Cooper, its directors, Central, Palmetto, SCE&G, and SCANA.

D. Defendants Intensify Their Efforts to Derail the Class Action

After the cases were consolidated, SCE&G and Santee Cooper again responded with motions to dismiss. Additionally, Santee Cooper filed a motion to compel arbitration against the Class.

While these motions were pending, Santee Cooper employed another creative tactic to derail the action. It filed a petition for original jurisdiction in the South Carolina Supreme Court. This petition asserted the need for immediate review of Santee Cooper's claim that its Enabling Act (S.C. Code Ann. Title 58, Chapter 31) required it to collect rates to pay debts it incurred irrespective of its conduct. Class Counsel once again mounted a vigorous opposition, arguing that circuit court jurisdiction should not be circumvented by Santee Cooper's tactic. The Class pointed out that its Complaint had raised the Enabling Act issue by pleading that Santee Cooper was violating the Act and, therefore, could not charge customers for the Project costs. Therefore, the issue would be squarely addressed by the circuit court.

While its petition was under consideration by the Supreme Court, Santee Cooper returned to the circuit court with a new approach. It withdrew its prior motions, including its motion to compel arbitration. In their place, it filed an amended motion to dismiss and a motion to stay all proceedings and discovery until the Supreme Court ruled on its petition for original jurisdiction. Class Counsel opposed this motion, which the circuit court subsequently denied. This allowed the litigation to continue while the Supreme Court considered Santee Cooper's petition.[6]

Santee Cooper again pivoted, withdrawing its previously-filed motion to stay pending its motion to dismiss. Shortly thereafter, the Court heard Santee Cooper's amended motion to dismiss. Class Counsel vigorously opposed the motion, which posed a number of novel questions, including whether the Enabling Act required Santee Cooper

[6] On February 28, 2019, the Supreme Court denied Santee Cooper's petition for original jurisdiction. It ordered that the litigation should continue in the circuit court and that the case should be "expedited for trial."

to collect rates to cover its debts regardless of how those debts were incurred—the same issue in the petition for original jurisdiction. Judge Hayes rejected Santee Cooper's arguments and denied the motion by order dated November 7, 2018.

The Court subsequently heard SCE&G's motion to dismiss, which focused on Plaintiffs' status as Santee Cooper customers as a basis for dismissal. The Court disagreed, concluding in its May 8, 2019 order denying the motion to dismiss that Plaintiffs had standing to bring their claim against SCE&G, and that the pleadings adequately connected SCE&G's acts to Plaintiffs' injury.

E. Having Rebuffed Defendants' Delaying Tactics in the South Carolina Court of Appeals and the South Carolina Supreme Court, Class Counsel Move Vigorously to Press Discovery and Prepare Their Case for Trial

On April 26, 2019, Plaintiffs filed a motion for leave to file a Fifth Amended Complaint, which was granted. This Complaint added SCANA Services, Inc. as a Defendant after Plaintiffs learned of its role in the Project.

On May 17, 2019, Plaintiffs moved for partial summary judgment against Santee Cooper on the basis of its January 27, 2014 sale of 5% of its interest in the Project to SCE&G. Despite executing the sale documents, Santee Cooper continued to charge its customers for its full 45% Project share. Plaintiffs argued that this violated S.C. Code § 58-31-200 which limited Santee Cooper to charging electric generation costs equal to its interest in the Project. Having raised with Santee Cooper this additional ground for liability, the Class ultimately decided to hold the motion in abeyance until trial to avoid another interlocutory appeal attempt.

In August 2019, Defendants filed answers to Plaintiffs' Fifth Amended Complaint. In addition, Santee Cooper filed a motion for a speedy trial to advance its declaratory

judgment claim involving the Enabling Act. Class Counsel opposed the motion, asserting it was unsupported by the law or facts. Thereafter, on September 6, 2019, Class Counsel filed a memorandum in support of their motion to certify the class.

On September 11, 2019, the Supreme Court appointed the Honorable Jean H. Toal to replace Judge Hayes as the presiding judge in the utility litigation. On October 8, 2019, Justice Toal heard all outstanding motions. At the hearing, the Court certified the class and ruled that Santee Cooper's declaratory judgment motion was premature. Heeding the Supreme Court's admonition that this matter be set for an expedited trial, Justice Toal set the case to be tried in Greenville County four months later in February 2020.[7] The Court also offered its services to the parties as a mediator, which the parties accepted. However, at a mediation session on October 14, 2019, the parties were too far apart in their evaluation of the case to make any progress.

Following Justice Toal's trial setting, Class Counsel redoubled their efforts to uncover the facts. Their discovery efforts were intense and wide-ranging. Santee Cooper made more than 40 individual productions of documents, while SCE&G made 26. In all, Defendants provided over 2.5 million pages of documents.[8] The deposition schedule was similarly intense. By the time of settlement, the parties had conducted 32 depositions and had 43 more that had either been scheduled and postponed, or were awaiting scheduling.[9]

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[7] At the Defendants' request, Justice Toal moved the trial venue from Hampton County to Greenville County.

[8] Affidavit of Jessica L. Fickling, ¶ 3. Exh. 3.

[9] Affidavit of Jessica L. Fickling, ¶ 4. Exh. 3.

Plaintiffs' deposition preparation was regularly hampered by late production of relevant documents. For example, on the night before the deposition of Michael Crosby, a Santee Cooper onsite project representative, Santee Cooper made a supplemental production of several thousand pages of documents.[10] In response to this tactic, Class Counsel invoked their right to keep all discovery depositions open.

As Class Counsel worked their way through the upper echelons of SCE&G management of the Project, several witnesses began to put their own interests ahead of the corporate "party line." Beginning with Jeff Archie (SCE&G's former vice president of New Nuclear), a series of SCE&G executives (Jimmy Addison, former CFO; Kevin Marsh, former CEO; and Steve Byrne, former COO) invoked their Fifth Amendment right against self-incrimination. While this preserved the individuals' right not to testify, their refusal could properly be invoked in a civil trial to secure an inference that their testimony would be adverse to the company. See Baxter v. Palmigiano, 425 U.S. 308, 318 (1976).

As they pursued their deposition program, Class Counsel continued a wide-ranging document search not limited to Defendants. Class Counsel received documents from a variety of other sources, including non-party entities such as electric co-ops, auditors, and consultants.[11] These documents included emails, correspondence, voicemails, text messages, notebooks, slide presentations, board minutes and materials, regulatory filings, complex financial statements, project metrics, construction plans, audit reports, consulting reports, human resources and compensation data, and project reports. Separated into teams, Class Counsel worked diligently to divide the tasks and digest the

[10] Affidavit of Jessica L. Fickling, ¶ 5. Exh. 3.

[11] Affidavit of Jessica L. Fickling, ¶ 3. Exh. 3.

information. The unyielding flow of serial productions frequently required Class Counsel to work through weekends and/or all night to complete the review of documents produced by Defendants on the eve of crucial depositions.

While reviewing the documents produced was a monumental task, it paled in comparison to the complex effort of seeking access to documents Defendants withheld. Defendants' refusal to turn over large numbers of documents based on claims of privilege was an ongoing issue. At one point, Defendants had produced at least twelve separate privilege logs encompassing tens of thousands of documents.[12] While reviewing the millions of pages of documents that had been produced, Class Counsel were also undertaking a line by line review of the privilege logs to decipher where they could successfully make challenges.

Plaintiffs filed a series of motions to compel concerning the privilege logs. In response, Defendants agreed to undertake additional review of the documents on certain privilege logs and to meet and confer in an attempt to minimize the number of disputed documents. The disputed documents would then be submitted for in camera review to the Special Master, the Honorable Jack Kimball.

After weeks of correspondence between Counsel, as well as numerous meet and confer phone conferences, the parties agreed to provide a sample of documents to Judge Kimball. On November 9, 2019, Judge Kimball issued his report and recommendation regarding the sample of documents, finding that 37 of the 66 documents submitted were not privileged. The Court adopted Judge Kimball's recommendations in part and ordered Defendants to conduct a thorough review of their privilege logs in accordance with Judge

[12] Affidavit of Jessica L. Fickling, ¶ 7. Exh. 3.

Kimball's findings and produce the types of documents he found not privileged. Defendants were also ordered to consolidate their privilege logs and revise them to include more accurate and complete descriptions.

As a result, SCE&G produced or removed redactions in over 14,000 documents.[13] But this new production had different bates numbers on every document, requiring Class Counsel to cross-reference and reconcile their prior work with what was produced under the new numbering system.[14] Their review of the remaining documents on the privilege logs revealed continuing issues with improperly withheld documents. Class Counsel identified numerous documents that involved no counsel, dealt with third-party communications and media inquiries, or had no facially plausible assertion of privilege. These controversies continued to occupy Class Counsel's time and attention, and required yet another motion to compel as the February trial date approached. Contemporaneous with those efforts, Class Counsel continued to formulate their trial plan, utilizing the ever-expanding arsenal of liability documents and testimony.

F. SCE&G Mounts Another Attempt to Avoid a State Court Trial

With the trial looming, and Justice Toal issuing definitive discovery rulings, SCE&G looked for a way to avoid facing a state court jury. On November 21, 2019, SCE&G removed the case to federal district court, arguing that data shared in preparation for class notice alerted it for the first time that minimal diversity jurisdiction existed under the Class Action Fairness Act ("CAFA"). Class Counsel immediately filed a motion to remand, citing SCE&G's prior knowledge of the Class' composition. This evidence included pleadings,

[13] Affidavit of Jessica L. Fickling, ¶ 7. Exh. 3.

[14] Affidavit of Jessica L. Fickling, ¶ 8. Exh. 3.

statements in open court, and SCE&G's conduct in related litigation, which showed that SCE&G's removal was untimely.

Since SCE&G had removed the case, Class Counsel were concerned that continuing significant litigation efforts while the case was pending in federal court could constitute a waiver of their right to remand. As a result, SCE&G's filing effectively stalled the case for more than two months. During this time, Class Counsel continued to work on trial preparation, document review, and other internal tasks. These efforts included meeting with experts, mapping trial presentations, preparing jury charges, and working on witness preparation. On January 21, 2020, the district court remanded the case, finding that SCE&G's removal was untimely, and that a CAFA exception applied.

Faced with the remand, SCE&G continued to maneuver against a state court trial. On January 28, 2020, it filed a motion in the federal district court to stay the remand pending its appeal to the Fourth Circuit Court of Appeals. The next day, SCE&G filed a petition in the Fourth Circuit for permission to appeal the remand order pursuant to 28 U.S.C. § 1453(c). Class Counsel filed extensive briefs opposing both SCE&G's motion to stay and its motion for permission to appeal.[15]

Although its final forum remained uncertain, the case was now back in state court, and the Class pressed to resume trial preparation.

[15] The district court denied the motion to stay on February 12, 2020. Cook v. South Carolina Public Service Authority, No. 6:19-cv-03285-TLW (D.S.C. Feb. 12, 2020). The Fourth Circuit petition remains pending, with that court requiring regular updates on the status of this settlement.

G. With Jurisdiction Restored, the State Court Case Moves Swiftly Toward Trial

Although Class Counsel were still litigating removal issues in the two federal forums, they immediately resumed trial preparation in the state court. On the day of remand, the Court entered an order authorizing class notice. The next day, the Court set a status conference for January 30, 2020. This resulted in a flurry of motions, including Santee Cooper's motion to decertify the class, Class Counsel's motion to amend the class notice plan to address the delay caused by SCE&G's removal, Defendants' motion to strike future damages, and a Class motion for in camera review of privileged documents.

At the January 30, 2020 status conference, the Court announced it would hear all outstanding motions, including those recently filed. The Court refused Santee Cooper's request to decertify the Class and try only the named Plaintiffs' claims, finding that this would entail enormous cost for a single individual. And, realizing that SCE&G's removal had made it impossible to meet the original Class trial date while providing adequate Class notice, the Court granted Class Counsel's motion to amend the notice plan. It set a new trial date for April 20, 2020.

The Court also addressed Defendants' motion to strike future damages as speculative. Class Counsel argued that the finance costs were fixed as of the abandonment date and were, therefore, not speculative. The Court denied Defendants' motion.

Finally, the Court addressed the Class motion for an in camera review of SCE&G's privileged documents. The Court indicated it was inclined to grant the motion and requested a proposed order.

H. As the Trial Date Approaches, the Court Offers to Mediate

Having disposed of all pending motions, the Court indicated that it intended to strictly enforce the April 20, 2020 trial date. Although it had presided over the unsuccessful October mediation, the Court offered its services once again if the parties were willing to make another good faith attempt at resolution. After conferring with their clients, Defense Counsel agreed with Class Counsel that it made sense to make one last negotiating attempt.

The parties convened for a two-day mediation session on February 18, 2020. After the first day, a negotiated resolution seemed unlikely. The negotiations were complicated by the sprawling nature of the dispute. Not only was the Class suing Santee Cooper, SCE&G, and Santee Cooper's main distributor, Central Electric Power, but Central had claims against Santee Cooper, Santee Cooper had claims against SCE&G, and SCE&G had claims against Santee Cooper. In addition, the overall litigation also involved SCE&G and Santee Cooper executives. These multi-faceted controversies seemed too complicated to resolve as the first day's session concluded. Undaunted, Justice Toal announced that the parties would convene for a second session the following day.

The next day, with Justice Toal's close supervision and "shuttle diplomacy," the parties exchanged proposals and counterproposals. As the day wore on, issues concerning settlement amounts, sources of payment, payment procedures, insurance coverage, scope of the settlement, and other issues arose, were discussed, debated, and one by one, resolved. But it was not until 2:15 a.m. on February 20, 2020 that the final hurdles were overcome with strong encouragement from Justice Toal.

The settlement that was hammered out at the end of this exhaustive mediation provides $520 million for a common fund. SCE&G will contribute $320 million immediately. Santee Cooper will contribute $200 million in payments of $65 million in the third quarter of 2020, $65 million in the third quarter of 2021, and $70 million in the third quarter of 2022.[16] This accommodation to Santee Cooper was essential due to Santee Cooper's precarious financial situation and cash flow issues.

The settlement also provides for court enforcement of a four-year Santee Cooper rate freeze pursuant to Santee Cooper's Reform Plan submitted to the legislature in connection with its potential reorganization or sale. That rate freeze is estimated to save Santee Cooper customers approximately $510 million.[17] Furthermore, both Defendants agreed not to attempt to recoup their settlement payments from their customers.[18]

Based on the progress made toward settlement, the Court stayed all pretrial proceedings except those involving settlement.

I. The Court Grants Preliminary Settlement Approval and Authorizes Notice to Class Members of the Settlement

On March 6, 2020, the Class filed its motion for preliminary approval of the class settlement and to continue the stay of pretrial proceedings. At a hearing on March 17,

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[16] The Settlement Agreement is attached to the March 17, 2020 Order granting Preliminary Approval to the Settlement.

[17] Affidavit of John Alphin, ¶ 7. Exh. 2. The Court-enforced rate freeze will actually run until December 2024, making it almost a 4.5 year freeze from the Final Approval Hearing on July 20, 2020. Settlement Agreement, ¶ IV.B.

[18] As part of the overall resolution, Plaintiffs released Central, which dropped its cross-claims against Santee Cooper, and Santee Cooper and SCE&G agreed to resolve the claims between themselves. All of Central's cooperatives, including Palmetto, subsequently approved the settlement.

2020, the Court heard presentations from the parties and granted preliminary approval, finding:

> This is the settlement of a hotly contested claim. I can't think of one more hotly contested than this with very strong arguments on both sides and much left to be decided before the case were tried as to what the positions of the parties might ultimately be, based on court rulings.[19]

In preliminarily approving the settlement and form of notice so that Class members might be heard, the Court stated that the settlement was "presumptively fair and reasonable at this stage without a doubt."[20]

Following the hearing, Class Counsel undertook to notify the approximately 1.6 million Class members by individual notice, publication notice, and website notice. These notices provide the Class with an opportunity to comment by July 1, 2020 on the settlement and Class Counsel's 15% fee request. Class Counsel will address any objections to the settlement or fee request at the final approval hearing on July 20, 2020.

IV. CLASS COUNSEL'S EFFORTS AMPLY SUPPORT THE REQUESTED CONTINGENCY FEE

A. Legal Standard

Under the American Rule, litigants are usually responsible for their own attorneys' fees. See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975). An important exception is a court's equitable power to award attorneys' fees from a "common fund." See Boeing Co. v. Van Gemert, 444 U.S. 472, 478-79 (1980) (discussing equitable power of court to award attorneys' fees in common fund cases); Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 164 (1939) (explaining attorneys' fee award from the fund generated

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[19] March 17, 2020 Preliminary Approval Hr'g Tr. at 44-45. Exh. 4.

[20] March 17, 2020 Preliminary Approval Hr'g Tr. at 41. Exh. 4.

is within "the historic equity jurisdiction of the federal courts"); Alyeska Pipeline Serv. Co., 421 U.S. at 257 ("historic power of equity" permits recovery of attorneys' fees from fund).

The United States Supreme Court has long recognized that equity will not force a successful representative litigant to bear the costs of litigation while others reap the rewards. See Internal Imp. Fund Trustees v. Greenough, 105 U.S. 527, 535-36 (1881); see also Sprague, 307 U.S. at 166. An attorney's right to receive a reasonable fee from a common fund was first recognized in Central Railroad & Banking Co. of Georgia v. Pettus, 113 U.S. 116, 127-28 (1885). In Boeing Co. v. Van Gemert, 444 U.S. 472 (1980), the Supreme Court summarized the common fund doctrine:

> [T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. The common-fund doctrine reflects the traditional practice in courts of equity and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees. The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.
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> Id. at 478
> (internal citations omitted).

There can be no doubt that these equitable principles apply here. Counsel's efforts have resulted in the creation of a settlement fund of approximately $520 million, and equitable relief through Court enforcement of Santee Cooper's Reform Plan that will

freeze rates for over four years. Under established precedent, Class Counsel are entitled to a reasonable fee from the common benefit they have conferred.[21]

B. The Accepted Way to Determine the Class Counsel Fee is by a Percentage of the Benefit Conferred

There are two methods courts use in awarding legal fees. One looks at the hours spent, the "lodestar" method. The lodestar method involves multiplying the number of hours spent by the attorney's normal hourly rate to create a "lodestar" figure. This method is used in statutory fee shifting cases where a statute requires the Defendant to pay the Plaintiff's attorneys' fees. It is often the only way to compensate attorneys when the relief achieved is injunctive, as often happens when challenging an agency's practices. The other method looks at the risks and efforts of counsel in creating a fund and awards a percentage of the fund. The "percentage-of-the-fund" method is used in class actions where a lawyer has created a fund which is responsible for the fee.

While some early class action courts experimented with the lodestar method, it has long been recognized as ill-suited to determine a fair class action fee. A major criticism of the lodestar method is its propensity to encourage inefficiency. Despite diligent review of billing records by the court, attorneys can be rewarded for spending more time and billing at higher rates than they should. Moreover, when hours expended are the primary basis for a fee award, counsel has no economic incentive to resolve a case until the desired hours are recorded. The fault with focusing on the number of hours spent by

[21] Although the multi-year rate freeze confers a significant additional benefit on the Class, (as well as on new Santee Cooper customers), Class Counsel are only seeking a fee based on the common fund's value.

counsel was explained succinctly in Blank v. Talley Industries, Inc., 390 F. Supp. 1 (S.D.N.Y. 1975):

> To give [the number of hours spent] prime importance may at times result in rewarding inefficiency or the luxurious practice of law and penalizing those who are efficient and expeditious in performing their legal tasks.
>
> Id. at 5.

South Carolina Federal Judge Bryan Harwell echoed this sentiment in approving a common fund percentage fee:

> The percentage-of-the-fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorney's fees on an hourly basis.
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> DeWitt v. Darlington Cty., S.C., 2013 WL 6408371, at *6 (D.S.C. Dec. 6, 2013).

As Judge Harwell noted, under the percentage-of-the-fund method, Class Counsel will be penalized for spending too many hours on a case. Id. Clearly, the percentage-of-the-fund method enhances efficiency, while a focus on hours spent encourages inefficiency.

The percentage-of-the-fund method also aligns Class Counsel's interests with those of the class. An attorney whose paycheck is dependent on the class recovery is obviously more motivated to push a settlement to the limits than an attorney whose compensation is independent of the final settlement figure.

The percentage-of-the-fund method also more accurately reflects the economics of plaintiffs' litigation practice. Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1269 (D.C. Cir. 1993). In Howes v. Atkins, the district court noted that "[p]laintiffs' litigation practice, given the uncertainties and hazards of litigation, must necessarily be result-oriented. It matters little to the class how much the attorney spends in time or money to reach a

successful result." 668 F. Supp. 1021, 1025 (E.D. Ky. 1987). Making a similar point in In re Continental Illinois Sec. Litig., Judge Richard Posner wrote:

> The judicial task might be simplified if the judge and the lawyers bent their efforts on finding out what the market in fact pays not for the individual hours but for the ensemble of services rendered in a case of this character. . . . The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome.
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> 962 F.2d 566, 572 (7th Cir. 1992) (emphasis added).

The vast majority of class action courts have concurred in Judge Posner's view and employed the percentage of the fund method. South Carolina state and federal courts have both adopted the percentage method for common fund cases.

C. The Percentage-of-the-Fund Method Has Been Widely Applied to Class Actions

1. Longstanding Federal Precedent Supports the Percentage-of-the-Fund Method

Because federal class actions occur more frequently than state class actions, South Carolina courts find it useful to refer to federal authority for guidance. See Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). The highest federal authority, the United States Supreme Court, has consistently held it appropriate for a common fund fee to be determined on a percentage-of-the-fund basis. See, e.g., Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 165-66 (1939); Central R.R. & Banking Co. of Georgia v. Pettus, 113 U.S. 116, 124-25 (1885); Internal Imp. Fund Trustees v. Greenough, 105 U.S. 527, 532-33 (1881). In Blum v. Stenson, the Court recognized, "under the common fund doctrine . . . a reasonable fee is based on a

percentage of the fund bestowed on the class. . . ." 465 U.S. 886, 900 n.16 (1984). Since Blum, numerous federal courts have endorsed the percentage-of-the-fund method.[22]

South Carolina federal courts have followed this overwhelming trend in applying the percentage-of-the-fund method. Over thirty years ago in Edmonds v. United States, 658 F. Supp. 1126 (D.S.C. 1987), esteemed Federal Judge Sol Blatt Jr. ruled that the appropriate method of computing fees in common fund cases is the percentage-of-the-fund method. Judge Blatt relied on the Supreme Court's statement in Blum that in common fund cases, "a reasonable fee is based on a percentage of the fund bestowed on the class." Id. at 1144 (quoting Blum, 465 U.S. at 900 n.16). The court noted that "no subsequent statements by the Supreme Court suggest any other approach." Id. Judge Blatt also found that "sound policy considerations support the use of percentage-based

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[22] See, e.g., Camden I Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768, 774 (11th Cir. 1991) ("After reviewing Blum, the Task Force Report, and the foregoing cases from other circuits, we believe that the percentage of the fund approach is the better reasoned in a common fund case."); In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295, 307 (1st Cir. 1995) (holding percentage-of-the-fund method may properly be used to calculate attorneys' fees in common fund cases); In re General Motors Corp. Pick-Up Truck Fuel-Tank Prods. Liab. Litig., 55 F.3d 768, 822 (3d Cir. 1995), cert. denied, 516 U.S. 824 (1995) (explaining that in common fund cases a district judge can award attorneys' fees as a percentage of the fund recovered); Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 515 (6th Cir. 1993) (recognizing the recent trend toward adoption of a percentage-of-the-fund method in common fund cases); Montgomery v. Aetna Plywood, Inc., 231 F.3d 399, 408-09 (7th Cir. 2000), cert. denied, 532 U.S. 1038 (2001) (affirming attorneys' fee award based on a percentage of the settlement fund); Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1311-12 (9th Cir. 1990) (affirming award of attorneys' fees calculated by the percentage-of-the-recovery method); Gottlieb v. Barry, 43 F.3d 474, 487 (10th Cir. 1994) (authorizing percentage approach and holding that use of lodestar/multiplier method was abuse of discretion); Waters v. Int'l Precious Metals Corp., 190 F.3d 1291, 1294 (11th Cir. 1999), cert. denied, 530 U.S. 1223 (2000) (applying rule that attorneys' fees should be a reasonable percentage of the common fund created for the benefit of the class); and Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C. Cir. 1993) (adopting the percentage-of-the-fund approach when determining attorneys' fees in common fund cases).

fees in common fund cases," specifically citing Class Counsel's incentive to "push the settlement fund demanded to the limits." Id. at 1145; see also Ward v. Dixie Nat'l Life Ins., C.A. No. 3:03-cv-03239-JFA (D.S.C. Dec. 15, 2008) [Hon. Joe Anderson] (same).

2. South Carolina State Court Precedent Agrees With Federal Precedent in Applying the Percentage-of-the-Fund Method

Numerous South Carolina courts have determined that the percentage of the fund method is an appropriate method for awarding attorneys' fees in a common fund action. The South Carolina Supreme Court spoke to this issue in Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008). In that case, the Court distinguished "fee shifting" cases, where the defendant pays the Plaintiff's attorney's fees (and a lodestar method is appropriate), from "common fund" cases, where the fund pays the Plaintiff's attorney who created it (and the percentage method is used):

> The common fund doctrine allows a court in its equitable jurisdiction to award reasonable attorneys' fees to a party who, at his own expense, successfully maintains a suit for the creation, recovery, preservation, or increase of a common fund or common property.
>
> . . .
>
> [W]hen awarding fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's "success". These courts consequently base an award of attorneys' fees on a percentage of the common fund created, known as the "percentage-of-the-recovery" approach.
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> Layman v. State, 376 S.C. at 452-53, 658 S.E.2d at 329-30.

Layman is consistent with earlier South Carolina authority such as Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003), where the Court upheld a percentage fee assessed against a common fund. These modern cases built upon long-standing South Carolina precedent directing an attorney's fee to be paid from a common fund that the

attorney's efforts helped create. See Petition of Crum, 196 S.C. 528, 14 S.E.2d 21, 23-24 (1941) (attorney who creates a common fund is entitled to a fee from the fund); Shillito v. City of Spartanburg, 214 S.C. 11, 33, 51 S.E.2d 95, 104 (1948) (same). The Honorable John Hayes, who previously presided over this case, agreed in Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008), "that the percentage of recovery method [is] the accepted way to analyze fees to be paid from a common fund." Slip op. at 3.[23]

D. The Requested Fee is Quite Modest Compared to the Established Range for Similar Settlements

1. The Requested 15% Fee on the Cash Common Fund is Well Below the Accepted Class Settlement Fee Range

There is no steadfast rule to determine the reasonable percentage of a common fund to award as a fee. The fee must be determined by the facts of each case. But, cases applying the percentage-of-the-fund method in class settlements give significant guidance on accepted fee ranges. Due to their greater frequency, federal class actions provide the broadest data on accepted common fund fee percentages. One representative opinion that surveyed the law extensively concluded:

> [B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards (such as the NERA study), this Court concludes that attorneys' fees in the range from twenty-five percent (25%) to thirty-three and thirty-four one-hundredths percent (33.34%) have been routinely awarded in class actions.
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> Shaw v. Toshiba Am. Info. Sys., Inc., 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000).

[23] Exh. 5.

An award of 33.33% of the recovery or more is not unusual in traditional class actions. The majority of attorneys' fee awards fall between 20% and 40% of the common fund, although recoveries of up to 50% have been awarded. In re Warner Commc'ns Sec. Litig., 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("Traditionally, courts in this Circuit and elsewhere have awarded fees in the 20%-50% range in class actions."), aff'd, 798 F.2d 35 (2d Cir. 1986).[24]

Other federal court opinions arrive at the same approximate range. As Judge Harwell noted in DeWitt v. Darlington Cty., S.C., 2013 WL 6408371, at *9 (D.S.C. Dec. 6, 2013), "attorney's fee awards generally range anywhere from nineteen percent (19%) to forty-five percent (45%) of the settlement fund." (internal quotations omitted); see also, In re Ikon Office Sols., Inc., Sec. Litig., 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."); Maywalt v. Parker & Parsley Petroleum Co., 963 F. Supp. 310, 313 (S.D.N.Y. 1997) ("Traditionally, federal courts have awarded fees in the 20% to 50% range in class actions."). The federal *Manual for Complex Litigation*, which guides federal

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[24] Even some mega settlements involving billions of dollars have awarded a higher percentage than Counsel seek here. Perhaps the most well-known of the mega-case settlements was the $250 billion nationwide tobacco settlement. In those cases, a three-person arbitration panel evaluated the performance of counsel in the various state actions and awarded an appropriate percentage. In the Florida state case, which received a $13.2 billion recovery, the panel awarded a 26% fee ($3.4 billion). Florida v. Am. Tobacco Co., No. CL-95-1466-AH (Palm Beach Co. Cir. Ct. 1998). In the Mississippi state case, the panel awarded 34% of the state's $4.1 billion recovery ($1.43 billion). Moore v. Am. Tobacco Co., No. 94-1429 (Miss. Ch. Ct. 1998). Some non-tobacco mega-settlements likewise have awarded fees well in excess of 15%. See, e.g., Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1239-40 (S.D. Fla. 2006) (31.33% fee on a $1.075 billion settlement).

judges' fee decisions, advises that a 25% fee "represents a typical benchmark." See § 14.121 (4th Ed.).

2. Recent South Carolina State and Federal Class Actions Follow the Consensus and Find Fees in the Range of 25% or More to Be Appropriate

South Carolina common fund cases follow the consensus view and regularly award fees at or above 25%. In Condon v. State, 354 S.C. 634, 644 n.8, 583 S.E.2d 430, 435 n.8 (2003), where the circuit court awarded a 28% fee, the Supreme Court cited favorably a federal case saying that fees "ordinarily range from 20 percent to 30 percent of the common fund created." (quoting Paul, Johnson, Alston & Hunt v. Graulty, 886 F.2d 268, 272 (9th Cir. 1989)).[25] Other cases have awarded even higher fees based on their individual facts. In Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008), Judge Hayes noted that the customary South Carolina fee for a complex contingent fee case "ranges from one-third to one-half of the gross recovery." Slip op. at 7.[26] He ultimately awarded a one-third contingent fee on a $57 million recovery, finding:

> Here, Class Counsel has requested one-third of the settlement fund created. This request is well within the range of fees routinely approved by courts in class actions.
>
> Id.

The Court noted that this fee was at the lower end of the range of common fund fees approved in South Carolina courts. Id. Indeed, a higher percentage was approved by

[25] The Court affirmed the fee award in Condon, finding that the Attorney General lacked standing to challenge the fee. Id.

[26] Exh. 5.

another South Carolina court in Fairey v. Exxon Corp., C.A. No. 94-CP-38-118 (Orangeburg Cty. Ct. Com. Pl. Oct. 9, 2003) (40% of a $30 million recovery).

Other South Carolina cases agree that a one-third common fund fee is within the range of appropriate fees. See e.g. Edwards v. SunCom, 2008 WL 4897935 (S.C. Ct. Com. Pl. May 5, 2008); Lackey v. Green Tree Fin. Corp., C.A. No. 96-CP-06-073, slip op. at 24 (S.C. Ct. Com. Pl. July 24, 2000); Bazzle v. Green Tree Fin. Corp., C.A. No. 97-CP-18-258 (S.C. Ct. Com. Pl. July 24, 2000);[27] Neaton v. Northland Madison at Park West, LLC, C.A. No. 2010-CP-10-9095, slip op. at 1-2 (S.C. Ct. Com. Pl. Apr. 15, 2015).

In Montague v. Dixie Nat'l Life Ins. Co., 2011 WL 3626541 (D.S.C. Aug. 17, 2011), Judge Joseph Anderson awarded a 33% fee in a common fund case, citing numerous decisions supporting that percentage:

> A total fee of 33 percent for all work performed in this case is well within the range of what is customarily awarded in settlement class actions. An award of fees in the range of 33% of the fund for work performed in the creation of a settlement fund has been held to be reasonable by many federal courts.

Id. at *2; Ward v. Dixie Nat'l Life Ins. Co, C.A. No. 3:03-cv-03239-JFA, slip op. at 2 (D.S.C. Dec. 15, 2008); see also, Temp. Servs., Inc. v. Am. Int'l Group, Inc., 2012 WL 4061537, at *8 (D.S.C. Sept. 14, 2012) (33⅓% fee); and DeWitt v. Darlington Cty., S.C., 2013 WL 6408371, at *9 (D.S.C. Dec. 6, 2013) (33⅓% fee).

Even where the Class fund is in the range of this significant recovery, courts have awarded higher percentage fees than Counsel seek here. While South Carolina has seen few cases of the magnitude of this case, an instructive example from our federal court highlights some of the controlling principles. In Spartanburg Reg'l Health Servs. Dist.,

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[27] Professor John Freeman, a fee expert in this case, testified in both the Lackey and Bazzle cases and filed an affidavit in Fairey. Freeman Affidavit, ¶ 65. Exh. 6.

Inc. v. Hillenbrand Indus., Inc., 2006 WL 8446464, at *5 (D.S.C. Aug. 15, 2006), Judge Henry Floyd awarded a 25% class action fee (approximately $117 million) on a settlement of approximately $468.6 million. That settlement consisted of $337.5 million in cash and Defendant's agreement to change its future pricing policies that the court valued at over $131.1 million. Id. at *5 and n.3. Among the factors that Judge Floyd found significant to support a 25% fee were:

1. Counsel had been litigating for approximately two and a half years;
2. The settlement was at the highest end of any expected result;
3. The case involved "novel and difficult" legal and economic issues;
4. Other law firms had rejected an invitation to join the litigation on the ground that it was too risky; and
5. In other class actions with recoveries of more than $100 million, "a majority of circuit courts award between twenty and thirty percent of the fund, with an average of 25.03 percent."

Id. at *2-*4.

Spartanburg Reg'l Health Servs. bears remarkable similarities to this case – novel and difficult legal theories, attorneys working on a pure contingency, two and a half years of effort, other firms' refusal to be involved, and an extraordinary result.[28] Significantly, Class Counsel in the Spartanburg Reg'l Health Servs. case were awarded a percentage fee based on the total value of the common benefit, which included the Defendant's change in business practices.[29] Id. at *5. Here, Class Counsel seek a fee based solely

[28] One of the Class Counsel firms here (McGowan Hood & Felder) was also a counsel in the Spartanburg Reg'l Health Servs. case.

[29] It is perfectly appropriate for Class Counsel to receive a fee based on non-monetary value to the Class. See Mills v. Elec. Auto – Lite Co., 396 U.S. 375, 392, 90 S.Ct. 616,

on the cash portion of the settlement, and at a rate well below that awarded in Spartanburg Reg'l Health Servs. Judge Floyd's opinion is a prime example of courts recognizing that those who take enormous risk, and labor without compensation for years, should receive fees commensurate with the risk they undertake and the creativity they demonstrate.

Our Supreme Court has said that analysis of the fees awarded in similar cases "is particularly persuasive to us." Condon v. State, 354 S.C. 634, 644 n.8, 583 S.E.2d 430, 435 n.8 (2003). While there are few South Carolina class action settlements in the range of this recovery, numerous class actions elsewhere with similar or larger settlements have awarded fees in excess of the 15% Class Counsel have requested. A sampling of such cases includes:

1. In re Urethane Antitrust Litig., 2016 WL 4060156, at *1, *8 (D. Kan. July 29, 2016) (33⅓% fee on a $835 million settlement);

2. Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1239-40 (S.D. Fla. 2006) (31.33% fee on a $1.075 billion settlement);

3. In re TFT-LCD (Flat Panel) Antitrust Litig., No. M07-1827SI, 2013 WL 1365900, at *8, *20 (N.D. Cal. Apr. 3, 2013) (28.6% fee on a $1.083 billion settlement);

4. In re Citigroup, Inc. Bond Litig., 988 F. Supp. 2d 371, 373 (S.D.N.Y. 2013) (16% fee on a $730 million settlement);

5. In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33⅓% fee on a $510 million settlement);

6. In re Adelphi Commc'ns Corp. Sec. & Derivative Litig., No. 03-civ-5755, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006), aff'd, 272 F. App'x 9 (2nd Cir. 2008) (21.4% fee on a $455 million settlement);

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625 (1970) (Counsel entitled to a fee for uncovering corporate misconduct even though their work "may never produce [ ] a monetary recovery from which fees could be paid.").

7. Carlson v. Xerox Corp., 596 F. Supp. 2d 400, 403 (D. Conn. 2009), aff'd, 355 F. App'x 523 (2nd Cir. 2009) (16% fee on a $750 million settlement);

8. In re Checking Acct. Overdraft Litig., 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011), appeal dismissed, 2012 WL 456691 (11th Cir. 2012) (30% fee on a $410 million settlement);

9. In re Cardinal Health, Inc. Sec. Litigs., 528 F. Supp. 2d 752, 754-55 (S.D. Ohio 2007) (18% fee on a $600 million settlement); and

10. In re Lucent Tech., Inc. Sec. Litig., 327 F. Supp. 2d 426, 433-34 (D.N.J. 2004) (17% fee on a $517 million settlement).[30]

E. Counsel's Extraordinary Achievement Supports a 15% Fee at a Minimum

As the cases make clear, the determination of an appropriate fee percentage in any class action is "somewhat elastic and depends largely on the facts of a given case." In re Ikon Office Sols., Inc., Sec. Litig., 194 F.R.D. 166, 193 (E.D. Pa. 2000). Recognizing that a 15% fee is well below the range of fees in similar cases, it is useful to review the factors that confirm such a fee to be extraordinarily reasonable.

In a common fund case, "the amount involved and the results obtained" are given the greatest weight when the recovery is highly contingent. Brown v. Phillips Petroleum Co., 838 F.2d 451, 456 (10th Cir. 1988), cert. denied, 488 U.S. 822 (1988). As stated by another South Carolina court, "[u]ltimately [ ] when a 'common fund' is generated for the benefit of the class, the result is everything." Littlejohn v. State, 2002 WL 34454074, at *5 (S.C. Com. Pl. Apr. 23, 2002), appeal dismissed sub nom, Condon v. State, 354 S.C.

[30] It is worth noting that these fee percentages were awarded in cases involving areas of litigation (antitrust, securities) where the governing law was already established. Having established precedent removes one element of uncertainty from the litigation. That uncertainty remained here as Class Counsel were proceeding in unchartered legal waters.

634 (2003). Here, Class Counsel worked on a highly contingent case where they achieved an unprecedented recovery through enormously creative effort. This result would support a larger common fund fee than requested here. At a minimum, it fully supports the 15% fee request.

In South Carolina, the factors used in the overall assessment of a reasonable fee are set forth in Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997):

1. The nature, extent, and difficulty of the case;
2. The beneficial results obtained;
3. The professional standing of counsel;
4. The contingency of compensation;
5. The time necessarily devoted to the case; and
6. The customary legal fee for similar services.

Taken in combination, these factors support the view that a 15% fee here is extremely reasonable.

1. The Nature, Extent, and Difficulty of the Case

This Court provided a succinct evaluation of the extent and difficulty of this case in its remarks during the Preliminary Approval Hearing:

> [T]his is a – quite a remarkable accomplishment in one of the most complex pieces of litigation in my 50-plus years of practice I have ever seen.[31]
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> . . .
>
> Many amended pleadings were filed. Much discovery was taken, including depositions, the exchange of over a million documents, much supervision by the Court, issues that arose with respect to confidentiality, with respect to the breadth of the requests for information, so that by the time we had

[31] March 17, 2020 Preliminary Approval Hr'g Tr. at 7. Exh. 4.

> the first mediation in October of 2019, the – this litigation was at a mature state, where much was known by both sides.[32]

As the Court recognized, this case was a cutting-edge effort to address a novel injury using a creative legal theory. There was no "roadmap," as there is with many typical class actions in the securities, antitrust, employment, and products liability fields.[33] Similar challenges to nuclear project abandonment costs had already foundered. For example, in Newton v. Duke Energy Florida, LLC, No. 16-cv-60341-wpd, 2016 WL 10564996 (S.D. Fla. Sept. 21, 2016), Florida customers had advanced $2 billion to fund defunct nuclear projects. The court dismissed their claims and the Florida customers received nothing. Id.[34] Similarly, just two months before Class Counsel launched their risky effort in August 2017, the court in Biloxi Freezing & Processing, Inc., v. Mississippi Power Co., C.A. No. A2401-2016-00077 (Miss. Cir. June 23, 2017), rejected customer claims challenging spending on a power plant project.[35]

The legal landscape did not grow more favorable as Class Counsel pursued their case. On the contrary, after Class Counsel had been litigating for a year, the Eleventh Circuit Court of Appeals affirmed the dismissal of the Florida customers' case. In its opinion, the appeals court refused to second guess the rationale "that utilities . . . should

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[32] March 17, 2020 Preliminary Approval Hr'g Tr. at 37. Exh. 4.

[33] While these types of cases retain significant difficulty, the fact that they are litigated in established areas of the law with proven track records lessens the risk of total loss. Speaking of one of these established subject areas, the court in In re Citigroup, Inc. Bond Litig., 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) said, "the risk of achieving no recovery at all in a securities class action suit has become quite small."

[34] Exh. 7.

[35] Exh. 8.

be able to recoup from their customers the costs associated with a project for the construction of a nuclear power plant, and that they should not have to return funds received even if the project is not completed." Newton v. Duke Energy Florida, LLC, 895 F.3d 1270, 1276 (11th Cir. 2018). This affirmance came just a few weeks after the plaintiffs in the Mississippi customer case (Biloxi Freezing) had abandoned the appeal of the dismissal of their case.[36]

To put it mildly, the twin defeats of these two customer refund cases gave Class Counsel no encouragement in their efforts. In light of this dismal track record, the circuit court's words about a successful settlement in Littlejohn v. State ring true here, "[t]his result, derived from a theory of recovery which had no proven track record in other venues, is an excellent outcome." 2002 WL 34454074, at *16.

It is well-settled that "the riskier the case, the greater the justification for a substantial fee award." Montague v. Dixie Nat'l Life Ins. Co., 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011) [Hon. Joe Anderson]. With two similar cases having been dismissed, Class Counsel were taking an extreme risk in investing their energy and resources into this effort for Santee Cooper's customers. In doing so, they faced tenacious opposition. The Defendants vigorously attacked the customers' right to challenge the Project's costs. They raised the "filed rate" doctrine and other complex

[36] Biloxi Freezing & Processing, Inc., et al. v. Mississippi Power Co., et al., appeal dismissed, No. 2017-CA-00984-SCT (Miss. July 13, 2018). Exh. 8.

defenses.[37] Class Counsel rebuffed their defenses and worked tirelessly to uncover strong liability evidence.

Class Counsel realized that because of Santee Cooper's precarious financial condition, they had to press to hold the Project's managing partner, SCE&G, accountable to Santee Cooper's customers. This was a risky strategy, as SCE&G claimed it owed no duty to Santee Cooper customers. Class Counsel knew they would have to show that SCE&G was well aware that its mismanagement would inevitably cost customers of each joint venturer large sums. Toward this end, Class Counsel assembled a bank of documents establishing SCE&G's culpability and continued attacking SCE&G's claims of privilege, believing that additional critical information was likely buried in the withheld documents. This effort led to important discoveries about the depth of SCE&G's knowledge of the challenges facing the Project.

Through an important October 2019 privilege challenge, Class Counsel obtained more than 100 previously withheld or redacted documents concerning PricewaterhouseCoopers ("PWC"), who SCE&G had retained in March 2010 to analyze the Project's status. These documents – dated more than four years before the Bechtel Report – exposed enormous failings in SCE&G's Project management. SCE&G had tried to shield PWC's findings by having the reports sent through its General Counsel.

When Class Counsel succeeded in extracting the PWC documents, the reasons for SCE&G's desire to withhold them became clear. For example, in its July 2011 "Project

[37] While Santee Cooper is not regulated by the PSC, it nevertheless claimed the "filed rate" doctrine could apply to it. See Amended Motion to Dismiss Fourth Amended Complaint at 17 (July 9, 2018) ("The filed rate doctrine bars Plaintiffs' claims.").

Governance Review," PWC followed up on an earlier 2010 Project analysis. Among its damning findings were the following:

- **However, the Project team has not acted on a considerable number of the 2010 recommendations, and continues to lag behind in implementing effective governance and control processes in several key performance areas that will have a significant impact on the ultimate success of the Project.**

. . .

- **The organization is not sufficiently staffed in a number of key functional areas either to adequately address current challenges or to effectively prepare for meeting upcoming demands.**

. . .

- **The Project team is not aggressively tracking the Consortium's [Contractors] compliance with its contract obligations.**

. . .

- **The Consortium has not yet provided Earned Value information to the Project team as required by the Contract and by its own Project Execution Plan, preventing SCE&G from conducting a meaningful evaluation of project schedule and cost progress, and from forecasting costs.**

. . .

- **The Project team does not have a reliable means of identifying, tracking, or resolving issues/risks with the potential to impact Project success.**

. . .

- **The Consortium's current approach to reporting status of performance inadequately reflects Project progress and does not highlight known issues that are impacting the Project. For example, the Consortium reports Quality performance as "green" despite the numerous quality problems on the Project that have necessitated stop work orders and continue to impact overall performance. The Consortium similarly reports favorably on cost performance despite being unable to provide any support for the earned value of the work completed. In addition, the Project team does not conduct its own analysis of cost, schedule or quality performance, nor does it independently evaluate progress reported by the Consortium on a monthly basis; rather, it summarizes the data presented by the Consortium in its monthly report.**

. . .

- **[T]here have been numerous, documented quality problems with the Consortium and its equipment vendors that have led to stop**

work orders and that otherwise have impacted the Project's schedule.[38]

Having identified numerous problems with SCE&G's oversight of the Project, PWC sounded the alarm in 2011 – almost a year before the critical April 2012 "Full Notice to Proceed" date – that the Project was on a perilous course:

- **[T]he current approach to issue management does not support the comprehensive identification of critical Project issues, and will not be sustainable as the Project advances and the number of issues increase.**[39]

- **There does not appear to be any formal process, procedure or approach for identifying, managing, or mitigating risks to the Project.**[40]

- **It is misleading to have a Quality Assurance indicator of green given the number of quality related issues that the Project continues to experience (e.g. stop work orders for vendors, contractors, and the Shaw module facility).**[41]

- **The number and magnitude of significant quality-related issues that have impacted Project indicate a potential systemic problem with the Consortium's approach to Quality Control and Quality Assurance.**[42]

In a prophetic statement made six years before the Project was abandoned, PWC warned that if the overall project management did not improve:

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[38] See VC Summer – Project Governance Review (July 2011) ("PWC Report") at 4-5 (emphasis added). Exh. 9.

[39] PWC Report at 19 (emphasis added). Exh. 9.

[40] PWC Report at 19 (emphasis added). Exh. 9.

[41] PWC Report at 20 (emphasis added). Exh. 9.

[42] PWC Report at 7 (emphasis added). Exh. 9.

- **[T]he project will most likely suffer significant delays and increased cost due to stop work orders issued by the Project or by regulatory agencies.**[43]

PWC concluded its report by analyzing SCE&G's response to its earlier recommendations. Among the recommendations on which PWC "did not observe any progress" were the following:

1. Requiring resource loaded schedules from the Consortium;
2. Using an industry standard "project wide work breakdown structure;"
3. Performing prompt analysis of construction schedules provided by the Consortium; and
4. Developing and implementing schedule management procedures to identify acceptable and non-acceptable changes.[44]

Sadly, as PWC predicted, these problems continued and intensified as the Project spiraled further out of control.

Armed with these documents, Class Counsel pursued new depositions of SCE&G executives who had been deposed before this information was revealed.[45] In response, these executives invoked their right under the Fifth Amendment to refuse to testify. Their blanket refusal to answer questions about a project in free fall was powerful evidence of guilty knowledge that Class Counsel intended to use at trial. See Baxter v. Palmigiano, 425 U.S. 308, 318 (1976) (No Fifth Amendment bar to an adverse inference in a civil trial from a witness invoking the Fifth Amendment).

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[43] PWC Report at 25 (emphasis added). Exh. 9.

[44] PWC Report at 37-38 (emphasis in original). Exh. 9.

[45] These executives included Kevin Marsh (former CEO), Jimmy Addison (former CFO), and Steve Byrne (former COO).

Among those re-deposed was Steve Byrne, the SCE&G COO who had been interviewed by PWC for its 2011 report. Faced with intense questioning on February 17, 2020 regarding the explosive PWC findings, Mr. Byrne refused to answer any questions about the report on Fifth Amendment grounds.[46] The next day, SCE&G began serious settlement discussions at the renewed mediation.

Class Counsel also pressed to show that Santee Cooper was not an innocent bystander to SCE&G's machinations. Class Counsel discovered that SCE&G had shared the PWC reports with Santee Cooper.[47] Counsel elicited testimony from Santee Cooper witnesses confirming that: Santee Cooper was aware of issues with the nuclear construction in early 2011; that it knew there was no fully-integrated construction schedule; that "the project was not making the progress it needed to make"; that it had major concerns about SCE&G's management of the Project; that it was aware of project delays prior to consenting to "full notice to proceed"; and that Santee Cooper was complicit in sanitizing the Bechtel Report.[48]

Highlighting Santee Cooper's awareness of the Project delays, its onsite representative, Michael Crosby, testified that he put together a staggering project completion date estimate of 2038 – 22 years later than originally promised.[49] In March

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[46] Steve Byrne Deposition (Feb. 17, 2020). Exh. 10.

[47] See April 30, 2010 Email, William Cherry (SCANA) to Bill McCall (Santee Cooper). Exh. 21.

[48] The voluminous depositions and documents supporting these facts are available should the Court wish to review them.

[49] Michael Crosby Dep. at 251:1 - 252:13, June 20-21, 2019. Exh. 11.

2014, he sent an email bemoaning, "[s]ubmodule deliveries are going to kill the project."[50] Reviewing the joint venturers' construction plan in March 2014, Mr. Crosby stated, "[w]e will never be successful on this plan," and called the current state of the Project "[a] sad reality."[51] Testimony from many of the other 30 depositions confirmed Defendants' pervasive knowledge that the Project was doomed.

But none of the explosive discovery Class Counsel secured would have been useful if they did not have strong legal theories to take to trial. Class Counsel had to withstand the onslaught of comprehensive motions to dismiss Defendants filed attacking every aspect of the case.[52] Defendants' counsel did a magnificent job raising every conceivable defense and pursuing each vigorously. Their lawyers, who hail from the most prestigious law firms in South Carolina and the southeast, were relentless in defense of their clients. This excellent defense effort demanded the highest level of skill by Class Counsel. As Federal Judge Michelle Childs recognized in approving a 39% Class Counsel fee: "[A]dditional skill is required when the opponent is a sophisticated corporation with sophisticated counsel." Savani v. URS Prof. Sols., LLC, 121 F. Supp. 3d 564, 571 (D.S.C. 2015) (quoting Smith v. Krispy Kreme Doughnut Corp., 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007)). Class Counsel faced the best lawyers these sophisticated defendants could hire.

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[50] Id. at 293:8 - 294:7.

[51] March 5, 2014 Email from Michael Crosby to Lonnie Carter. Exh. 12.

[52] The docket sheet reflects 275 total entries. These entries include 71 motions on a variety of legal issues. Affidavit of Jessica Fickling, ¶ 10. Exh. 3.

The most objective evaluation of a case's difficulty is its contemporaneous assessment by expert litigators at inception. As class action courts have noted, "[r]isk of litigation should be considered as of when the case is filed." In re Foreign Exch. Benchmark Rates Antitrust Litig., 2018 WL 5839691, at *3 (S.D.N.Y. Nov. 8, 2018) (internal quotations omitted), aff'd sub nom, Kornell v. Haverhill Ret. Sys., 790 F. App'x 296 (2d Cir. 2019). Unlike many class actions, such as securities or antitrust, where the prospect of litigation invites intense competition to be "part of the action," only a select group of attorneys was willing to take the risk to pursue this novel lawsuit. Indeed, when Class Counsel approached some of the most experienced complex class action lawyers in South Carolina, they declined to become involved, "believing that the risk was too great and the prospect of success too remote."[53] Clearly there was no widespread belief among South Carolina attorneys that the case could be successfully prosecuted. Undaunted, Class Counsel put their heads down and worked diligently to bring the case to a successful conclusion.

The fact that experienced lawyers declined to become involved in this litigation is compelling confirmation not only of the risk involved, but of the extraordinary effort that success in such a risky endeavor would demand. Class action courts have recognized that other lawyers' contemporaneous rejection of involvement in a case is an important factor weighing in favor of an ample attorneys' fee. In Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc., 2006 WL 8446464 (D.S.C. Aug. 15, 2006), Judge Floyd recognized that without the incentive ample fees provide, competent counsel will not be attracted to handle risky cases. Judge Floyd took note that "[d]ue to the substantial

[53] Affidavit of Vincent A. Sheheen, ¶ 5. Exh. 13.

risk of nonpayment, Counsel had difficulty obtaining other practitioners to assist in their claim against Defendants." Id. at *4. The same reticence was evident here.

2. Beneficial Results Obtained

As the United States Supreme Court has recognized, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." Farrar v. Hobby, 506 U.S. 103, 114 (1992) (internal quotation marks omitted); See also In re Abrams & Abrams, P.A., 605 F.3d 238, 247 (4th Cir. 2010). Through hard work and determination, Class Counsel have achieved significant success when similar litigation elsewhere failed. They have secured the largest cash settlement in a private South Carolina state court class action.[54] In addition, the settlement gives Santee Cooper customers an enforceable contractual right to ensure that Santee Cooper honors its Reform Plan rates regardless of what may occur in the legislature regarding Santee Cooper's future.

At the preliminary approval hearing, this Court recognized the significant cash result obtained for the Class:

> That is a remarkable achievement by the parties to this case and of great benefit to the ratepayers. I don't know of another class action that's hit a 90 to 95 percent monetary target for the value of what the parties agree is a pretty good estimate of what the actual damages in the case were.[55]

The Court accurately described the cash recovery here as a remarkable achievement. From the date the Project began until the July 2017 abandonment, Santee Cooper

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[54] The only higher South Carolina state court settlement Counsel know of is the South Carolina tobacco settlement, in which one of the Class Counsel also participated. That settlement has paid the state approximately $1.6 billion over twenty years. Exh. 14.

[55] March 17, 2020 Preliminary Approval Hr'g Tr. at 40. Exh. 4.

customers had been charged approximately $540 million in advance financing costs. This is approximately the same amount that customers were charged from the April 2012 Santee Cooper "full notice to proceed" decision until the time of settlement.[56] Using either time frame, the $520 million settlement is well over 90% of the recoverable damages. Indeed, even if one were to consider the total advance financing costs Santee Cooper charged from project inception until the date of settlement (approximately $730 million), the recovery percentage is still over 70%.[57] This is virtually unheard of in class actions.

a. The Percentage Cash Recovery Here is Far Above the Class Action Average

Class action courts typically compare the settlement not to the total amount of class losses, but to the amount that may be realistically expected to be recovered at trial. Newberg on Class Actions, §13.51 (5th Ed.). In In re Adelphia Commc'ns Corp. Sec. & Derivative Litig., 2006 WL 3378705, at *2 (S.D.N.Y. Nov. 16, 2006), aff'd 272 F. App'x 9 (2d Cir. 2008), for instance, the class suffered a $5.5 billion securities loss. In evaluating a settlement of $455 million, the court noted that this was 8% of the total class losses, but the class could realistically only have recovered $1.65 billion, making the settlement

[56] Affidavit of John Alphin, ¶ 4. Exh. 2. While Santee Cooper began charging customers advance financing costs in 2007, it is arguable that these early costs were not as unjustified as later costs when the joint venturers' knowledge of the Project's problems grew. Class Counsel determined that as of April 2012, when Santee Cooper gave its consent to "full notice to proceed," the negligence of Defendants in continuing the Project in the face of mounting construction problems was the strongest case for recovery.

[57] Affidavit of John Alphin, ¶ 3. Exh. 2. As the Alphin affidavit shows, the Class had been charged $717,690,809 through December 2019. With Santee Cooper billing at approximately $6 million per month, Class Counsel estimate that the total charge as of the February 20, 2020 settlement is approximately $730 million.

recovery 27.5% of the realistic damages. Id. at *3. The court held that 27.5% was "an excellent settlement." Id.

Many other courts have approved settlements with much lower percentage recoveries than Counsel secured here. In In re Citigroup, Inc. Bond Litig., 988 F. Supp. 2d 371 (S.D.N.Y. 2013), the court found that a $730 million settlement on a damage claim of $3 billion (24%) was "an impressive result." Id. at 379. Another court described an 18% recovery as "a top quality result." In re Enron Corp. Sec., Derivative & ERISA Litig., 586 F. Supp. 2d 732, 788, 804 (S.D. Tex. 2008). In In re TFT-LCD (Flat Panel) Antitrust Litig., 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013), the court said that a settlement of approximately 50% of the potential recovery "is exceptional." Id. at *7. In In re Cardinal Health, Inc. Sec. Litigs., 528 F. Supp. 2d 752, 764-65 (S.D. Ohio 2007), the court described a $600 million settlement as an "outstanding recovery" because:

> The class recovered 20% of its alleged loss, outstripping the typical recovery in most securities class actions, which is usually between three and six cents on the dollar.

Indeed, even lower percentage recoveries than the 3 - 6% average have passed muster. In In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467 (S.D.N.Y. 2009), the court approved a settlement as "satisfactory" where the class recovered approximately 2% of its estimated damages. Id. at 510. The court took note of the strong defense posture and adverse rulings in finding such a small percentage to be satisfactory. Id. at 510-12.

Whether the $520 million settlement is judged by the percentage of the total $730 million in charges to the class (70%), or the more realistically achievable $540 million damage award at trial (96%), it is indeed a remarkable achievement.[58]

b. The Rate Freeze is an Additional Valuable Benefit

At the preliminary approval hearing, the Court also took note of an additional significant benefit of the settlement – the rate freeze:

> [T]hat is the four-year rate freeze. That is a really remarkable achievement for the ratepayers and can have, for many, as much or more value than the significant sums that will be put forward to reimburse ratepayers for what had been paid for the failed project.[59]

The Court accurately described the rate freeze as an additional, valuable class benefit. It is estimated to save Santee Cooper customers $510 million.[60] And while the rate freeze originated from Santee Cooper's legislative Reform Plan, that plan has yet to be legislatively adopted. As a result, this settlement is the only enforceable mechanism for the rate freeze.

As the Court recognized, the "degree of success obtained" here is, by any measure, enormous. Class Counsel's requested contingency fee of 15% of the common

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[58] While the total cash settlement is $520 million, Santee Cooper will be paying its $200 million contribution in three (3) payments. Class Counsel have calculated the discounted value of that $200 million payment stream to be approximately $196.5 million, using the same interest rate (1.75%) the settlement provides for SCE&G's payment. At the same time, Class Counsel negotiated to require SCE&G to pay interest on its payment for the period beginning shortly after preliminary approval until the payment's release to the Class after final approval. This amount, approximately $2.4 million, will be part of the common fund. Thus, the total common fund will be approximately $519 million in present cash value on the settlement's effective date. See Affidavit of John Alphin, ¶¶ 5, 6. Exh. 2.

[59] March 17, 2020 Preliminary Approval Hr'g Tr. at 41. Exh. 4.

[60] Affidavit of John Alphin, ¶ 7. Exh. 2.

fund is below the accepted class action percentage range, and especially modest when Class Counsel is seeking no fee on the significant benefit of enforcement of the multi-year rate freeze.[61]

The reasonableness of the fee is further supported by the revealing comparison that the 15% class fee, approximately $78 million, is significantly less than SCE&G paid its top five executives during the Project while they were mismanaging it.[62] It is also less than what Santee Cooper charged its customers in advance financing charges in just a single twelve-month period during a number of the years the Project was in existence.[63] Indeed, in 2017, the year that Class Counsel filed their claims, Santee Cooper charged its customers over $102 million in advance financing charges.[64] At the time of settlement, Santee Cooper was still charging millions more per month in advance financing costs. The class action's enforceable rate freeze will help alleviate this continuing burden.

3. Professional Standing of Counsel

A case of this importance demands extremely skilled counsel on both sides. Class Counsel are among the most esteemed class action and complex litigation attorneys in the state and nation. By working efficiently, Class Counsel were able to focus on the important issues, uncover critical information, and reach a reasonable resolution in less than the time it would have taken to take the case through trial and the inevitable appeals.

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[61] If Class Counsel's requested fee ($77.8 million) was computed on the total value of the common benefit to the Class ($519 million plus $510 million), it would be approximately a 7.5% fee.

[62] See supra note 2.

[63] See supra note 3.

[64] See supra note 3.

They believe their performance echoes Judge Hayes' sentiments in Anderson Memorial Hosp., "[t]his result was obtained despite worthy and able opposition by defense lawyers who are known for their excellence." Slip op. at 6-7.[65] This Court similarly recognized:

> And no quarter was given or – or expected as we tried to navigate the issues in this case.[66]

Class Counsel provide below a brief summary of the professional standing of the key attorneys involved and their contributions:

a. Speights & Solomons, LLC

Daniel A. Speights, has been practicing law for over 45 years. He is nationally known for his involvement in complex class actions and mass tort litigation including representing property owners in numerous bankruptcy courts. He has tried numerous complex cases to verdict. Gibson Solomons also has extensive class action experience, and recently served as co-lead counsel in a multi-state group of class actions before Federal Judge Michelle Childs.

Speights & Solomons filed Cook in August 2017, as the first and only class action on behalf of Santee Cooper's "indirect" customers, who make up 70% of its customer base. Speights & Solomons later moved to consolidate Cook with Kolbe, which covered Santee Cooper's "direct" customers. Mr. Speights served as Lead Counsel and Mr. Solomons served as Chair of the Liability Committee in the consolidated cases. Mr. Speights coordinated multiple administrative matters with the Court and all Defendants.

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[65] Exh. 5. At the depositions alone, Class Counsel were opposed at one time or another by at least 36 defense attorneys. Affidavit of Jessica L. Fickling, ¶ 4. Exh. 3.

[66] March 17, 2020 Preliminary Approval Hr'g Tr. at 7. Exh. 4.

During the summer of 2018, Mr. Speights successfully opposed Santee Cooper's motion to stay all proceedings in the circuit court until its petition to the Supreme Court was resolved. By the end of 2018, Speights & Solomons had attended and participated in eight hearings throughout the state on behalf of the Cook Plaintiffs.

Mr. Solomons coordinated the litigation, setting priorities and designating individuals and groups for specific tasks, including written discovery, document production, depositions, trial strategy and trial planning. He also took or supervised key depositions that helped establish the knowledge of Defendants of the futility of the Project going back to at least 2012. Mr. Solomons also argued pivotal legal motions in this case, including portions of Defendants' motions to dismiss, and class certification.

Mr. Speights' role as Lead Counsel included a heavy focus upon negotiations, selecting and coordinating with key players from Plaintiffs' team on the multi-party positioning. Mr. Speights pursued a settlement strategy as to each of the three groups of Defendants (Santee Cooper, SCE&G, and Central). Mr. Speights had regular discussions with Central's counsel (Mr. Ellerbe), with whom he had litigated for years, about a resolution that would satisfy both Santee Cooper and Central. Mr. Speights began a series of discussions with Dominion in 2018 to settle Cook. In early 2019 during a mediation before Senior Judge Joseph F. Anderson, Jr., Dominion reiterated its refusal to accept responsibility to Santee Cooper customers. In response, Mr. Speights placed SCE&G's motion raising that issue down for a hearing. Mr. Solomons argued the motion, prevailing on all points.

The appointment of Former Chief Justice Toal to this case on September 11, 2019 accelerated its pace. The Court made a number of significant rulings, including setting a

firm trial date for early 2020. Following SCE&G's November 2019 removal of the action, and a subsequent remand, Chief Justice Toal conducted a hearing on outstanding motions, where Mr. Solomons successfully argued against Santee Cooper's motion to decertify the Class. Speights & Solomons played an important role at the subsequent mediation supervised by Justice Toal, which concluded at 2:15 a.m. on February 20, 2020. Mr. Speights signed the Term Sheet on behalf of the Cook class. The demands of the litigation consumed a significant portion of the firm's time, forcing it to decline or refer other class actions while litigating Cook.

b. McGowan, Hood & Felder, LLC

McGowan, Hood & Felder's Class Action, Mass Tort & Government Representation practice group provides comprehensive services to clients in large-scale civil actions in South Carolina and nationwide. This practice is led by James L. Ward, Jr., a veteran litigator with over 20 years of complex litigation experience, and also includes Ranee S. Saunders and Whitney B. Harrison. Throughout his career, Mr. Ward has played significant lead and liaison counsel roles in complex class actions and multidistrict litigation involving pharmaceutical drugs, healthcare fraud, defective products, antitrust, and consumer protection.

Mr. Ward is the current President of the South Carolina Association for Justice and a Past President of the James L. Petigru Inn of Court. Mr. Ward has been included in The Best Lawyers in America for Plaintiffs' Mass Tort Litigation/Class Actions, Plaintiffs' Product Liability Litigation, and Plaintiffs' Personal Injury Litigation since 2016, including being named Charleston, SC "Lawyer of the Year" for Mass Tort Litigation/Class Actions in 2018. Mr. Ward was also a recipient of South Carolina Lawyers Weekly's Leadership

in Law Award and the Silver Compleat Lawyer Award given by the University of South Carolina School of Law Alumni Association.

Ms. Saunders has served as Mr. Ward's primary associate for the past three years. Having clerked for the Honorable Kaye G. Hearn at the Supreme Court of South Carolina for almost five years, Ms. Saunders possesses invaluable analytical and writing skills. She has been involved in numerous class actions in state and federal court, and she currently represents several states and local governments in litigation against opioid manufacturers and distributors.

Ms. Harrison joined the case with extensive experience in complex litigation and novel issues. She has tried several medical malpractice cases to verdict and has been associated to assist with numerous complex motions, trials, and appeals. Ms. Harrison currently serves on the boards of the South Carolina Bar Foundation, South Carolina Association for Justice, and South Carolina Appleseed Justice Center. In January 2020, Ms. Harrison was awarded the Trial and Appellate Advocacy Award from the South Carolina Bar for her exemplary advocacy skills. Ms. Harrison is the first woman to receive the award. Most recently, she was named to The State's 20 under 40 class for 2020, and she has been included as a Rising Star for Super Lawyers since 2016.

MHF has been integrally involved in this case from the outset. MHF filed the Kolbe case on behalf of Santee Cooper direct customers, which was ultimately consolidated into the Cook case on behalf of indirect customers. MHF served as chair of the Law Committee and played the lead role in opposing the Santee Cooper and SCANA motions to dismiss, Santee Cooper's motion to compel arbitration, its petition for original jurisdiction, its motion to stay, and its motion to strike future damages, as well as the

SCANA removal and subsequent appeal from the remand order, and various other motions. MHF also played a lead role in every aspect of class certification.

MHF was also heavily involved in fact and expert discovery. MHF drafted discovery requests and responses, reviewed documents, took numerous depositions, and was principally responsible for developing the factual record regarding all electric cooperative issues. MHF worked extensively on nuclear and damages experts, developing potential fact witnesses, producing comprehensive evidence outlines, developing trial mapping, and preparing jury charges.

On the settlement front, MHF participated in all settlement meetings and mediations, negotiated and drafted the settlement agreement, distribution plan, notice plan, and notices, and is leading the settlement notice and administration effort.

c. Strom Law Firm, LLC

The Strom Law Firm, LLC, has one of the most experienced litigators in the state of South Carolina in J. Preston Strom, Jr., a former United States Attorney for the District of South Carolina, with over 35 years of litigation experience. Throughout his years of practice, he has been heavily involved in class actions, complex litigation, and mass tort and catastrophic injury cases, and has represented criminal defendants accused of high profile white-collar crimes. His familiarity with the interplay between the civil and criminal arenas was uniquely beneficial in this case, particularly as major witnesses, including Defendants' former executives, began to invoke their 5th Amendment rights against self-incrimination.

A team of attorneys from the Strom Law Firm dedicated themselves almost exclusively to this case during its duration, including John R. Alphin, whose background

in finance, including an LLM in tax, proved pivotal in understanding the Defendants' financials and those of the Project itself, and in analyzing damages attributable to the Defendants' conduct. Jessica L. Fickling, who served as a member of the litigation committee, coordinated the significant components of Plaintiffs' discovery, drafting and responding to requests and interrogatories, and notices of deposition, and identifying witnesses to be deposed, as well as critical documents for those witnesses. Ms. Fickling led a collaborative effort to process the massive document productions, privilege challenges, and motions to compel.

Both Mr. Alphin and Ms. Fickling assisted in and took a number of pivotal depositions, assisted with expert discovery, interviewed witnesses, and planned and prepared for the trial of this matter, at which both would have played a critical role. During settlement negotiations, Mr. Strom, Mr. Alphin, and Bakari Sellers played important roles in setting the value of the case, and securing its value from the Defendants.

d. Richardson Patrick Westbrook & Brickman, LLC

Richardson Patrick Westbrook & Brickman, LLC ("RPWB") dedicated a team of attorneys to work on behalf of Santee Cooper's customers. RPWB attorney Terry E. Richardson, Jr. is widely regarded as among the most imaginative and skilled litigators in the state. He has been practicing law for 45 years and achieved numerous verdicts and multi-million dollar settlements. RPWB has been named as Class Counsel in approximately 40 class actions throughout the country.

Edward J. Westbrook, another senior lawyer in the firm, who argued with co-counsel the motion for preliminary settlement approval, was named a 2019 Lawyer of the Year in mass tort litigation and class actions. In 2018, he was nominated to the National

Trial Lawyers Top 25 Class Action Trial Lawyers Association. He was heavily involved in the nationwide tobacco litigation that resulted in a $250 billion settlement and was appointed by the Delaware Bankruptcy Court as special counsel to represent a nationwide class of homeowners that resulted in a $140 million settlement.

Senior litigators Mr. Richardson and Mr. Westbrook participated in the strategic management of the litigation. Mr. Westbrook served on the Law Committee, participated in responding to defense motions, and worked on settlement pleadings. Mr. Richardson participated in numerous depositions, including deposing Leighton Lord, and identified important witnesses.

Jerry Evans played a lead role in developing liability expert testimony, including preparing experts on scheduling/procurement and energy economics. He defended expert depositions and, at the time of settlement, was scheduled to depose defense liability experts. Mr. Evans performed extensive document review, worked on trial narratives, took several depositions, helped others prepare for depositions, and did pre-trial page and line designations of several key witnesses.

Dan Haltiwanger was heavily involved in strategic case management, was instrumental in developing evidence to show that the reasons Santee Cooper cited to justify abandoning the Project in 2017 existed in 2012 when it gave the Full Notice to Proceed. He took the depositions of numerous witnesses, including two of the most significant Santee Cooper employees, Marion Cherry and Lonnie Carter. He identified key documents for trial and met with the government to assist in its parallel case against key SCANA management. He argued privilege log issues before Justice Toal and edited and drafted several motions. He participated in numerous meetings with Central and

others to coordinate the effort against Santee Cooper and SCE&G. He was on the Insurance Committee pursuing insurance coverage for Santee Cooper. He oversaw the trial page and line designations project, was on the Law Committee, and if the case had not settled, would have been on the trial team.

TAC Hargrove did extensive research as a member of the Law Committee on issues including SCE&G's responsibility to Santee Cooper customers, prejudgment interest, the crime/fraud exception to privilege, and CAFA issues. He worked with Plaintiffs' expert John Heneage in preparing his expert report, did extensive document review, prepared multiple page and line designations, and pursued discovery related to the wasteful use of cranes on the Project. Other RPWB attorneys assisted the team on a variety of projects.

e. Bell Legal Group, LLC

J. Edward Bell, founder of the Bell Legal Group, has tried more than 300 major cases throughout the United States. He specializes in complex litigation and is a member of the American Trial Lawyers Association Top 100 Attorneys.

Mr. Bell and Gabrielle A. Sulpizio were instrumental in the discovery process as well as the trial preparation of this case. Specifically, they reviewed discovery documents, participated in mediation, collaborated regarding expert witnesses (e.g., Dr. Oliver Wood), developed discovery strategy, appeared at hearings, developed trial strategy, and planned on being part of the trial team. The Bell Legal Group was lead counsel in an ancillary case, Luquire et al. v. Marsh et al., which had additional defendants (SCE&G Officers and Board Members) and is part of the settlement agreement. Its attorneys drafted all pleadings in Luquire and did significant research to determine the liability of

officers and directors. The Luquire case afforded the Class the possibility of obtaining settlement funds from SCANA's Directors & Officers insurance policies. These policies totaled approximately $250 million, though they were eventually exhausted before the settlement by defense costs and settlement of other litigation.

f. Savage, Royall & Sheheen, LLP

Vincent A. Sheheen has been a member of the Bar since 1996. He has wide experience in complex litigation, including business, personal injury, and class action cases on both the Plaintiff and Defense side. He has appeared in state and federal trial and appellate courts, has tried numerous cases, and is a member of the Inn of Court and American Board of Trial Advocates. Mr. Sheheen is a South Carolina State Senator, a former Democratic Nominee for Governor, and a member of numerous state and local civic groups. Mr. Sheheen has obtained multi-million dollar settlements and verdicts as lead counsel.

Greg B. Collins has been a member of the South Carolina Bar since 2005. From 2005 through 2013, he represented over one thousand criminal defendants, handling over 60 jury trials. In 2013, Mr. Collins began practicing in civil defense for a large regional firm on a wide range of cases including personal injury, product defect, toxic tort, construction, and insurance coverage issues. In 2018, Mr. Collins joined Savage Royall & Sheheen, LLP, working on the same array of litigation matters, but on the plaintiff's side.

Mr. Sheheen took the lead on this matter for his firm with assistance from Mr. Collins on discovery matters. Mr. Sheheen was deeply involved in leading the group effort to develop settlement strategy, negotiate with Defendants, conduct mediation

efforts, and handle interactions with the Court. He also reviewed motions, pleadings, discovery and other documents, appeared at hearings, and developed and interviewed witnesses from the Fairfield County site.

g. Galvin Law Group, LLC

Greg Galvin is an experienced litigator with expertise in technological litigation tools. He has received an award from the South Carolina Federal District Court for assisting the Court with technology issues. Mr. Galvin focused his efforts on utilizing his computer platform with Nemo software to search the over a million documents produced to find the truly valuable ones and distribute relevant documents to lawyers preparing for depositions and motion hearings.

h. McCullough Khan, LLC

McCullough Khan, LLC ("MK") is a respected litigation firm focusing on commercial, construction, securities, and personal injury cases. MK has obtained numerous multi-million dollar verdicts and settlements for its clients.

MK was co-counsel on the first suit against Santee Cooper on behalf of "direct" customers (Kolbe), representing approximately 30% of Santee Cooper's market. The Kolbe complaint was first to assert extensive statutory and constitutional claims challenging Santee Cooper's charges for the Project. MK played a central role in briefing and defending these claims against Santee Cooper's unsuccessful efforts to dismiss them on the pleadings. Ratings agencies specifically cited these claims in several warnings and downgrades of Santee Cooper's credit rating. Later, Central employed these same claims in its cross-claims against Santee Cooper.

MK drafted pleadings, motions, discovery requests, and briefs; took depositions of Santee Cooper board members, including former board chair Charlie Condon; attended the majority of hearings; and participated in numerous litigation strategy sessions. MK served on the Settlement Committee, Administrative Committee, attended all mediation sessions, and played an instrumental role in developing the instant settlement.

Through discovery, MK located several insurance policies providing millions in coverage to the Defendant utilities and their respective boards. These efforts pressured Santee Cooper to hire insurance coverage counsel and sue these carriers in federal court which resulted in Santee Cooper receiving some insurance funds.

4. Contingency of Compensation

Although they were advancing novel legal theories against two large companies represented by enormously skilled lawyers, Class Counsel agreed to undertake this case completely on a contingent basis. Recognizing the enormous risk Counsel were undertaking, the two class representatives agreed to contingent fees of 33⅓% and 40% respectively.[67] Both class representatives are fully satisfied with Counsel's work and support the 15% fee request, which is far below what their contracts would have paid Counsel.[68]

5. Time Necessarily Devoted to the Cases

As this brief makes clear, Class Counsel are not applying for a fee because they plodded along and logged unnecessary hours, but because of their extraordinary success

[67] Exh. 15.

[68] See Affidavits of Jessica A. Cook and Chris Kolbe. Exhs. 19, 20.

in an unprecedented effort using novel theories of recovery. This Court recognized Counsel's efforts and hard work at the Preliminary Approval Hearing:

> I don't know of any lawyers on any side of this matter who've worked any harder in the many years I've been a judge than the lawyers who appear in this case.[69]

At the outset, Class Counsel recognized their effort must be intense, focused, and directed toward as quick a resolution of this litigation as possible in order to reduce the overall damage to the customers. For unlike many complex cases where the damage is complete by the time of filing, the continuing class losses here were significant. Santee Cooper had regularly raised rates to cover the Project's costs and would have continued to do so if not stopped. The settlement here not only provides a substantial cash payment, but provides court enforcement of a Santee Cooper rate freeze that will save customers money for years. Working efficiently, Class Counsel pursued the case vigorously from initial filing, when Defendants argued it had absolutely no merit, through discovery, motions, and an impending trial until Defendants realized they had to deal responsibly with the class to resolve this debacle.

The myriad issues and extensive discovery required an efficient, coordinated effort on behalf of Class Counsel. The eight law firms involved divided their efforts among the various aspects of the case. This ensured efficiency, avoided duplication of effort, and allowed the class to stand toe-to-toe with the excellent lawyers representing two of the largest companies in South Carolina.

Unlike some class actions that "piggyback" on government antitrust or securities investigations, this case preceded any government action. In fact, Class Counsel aided

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[69] March 17, 2020 Preliminary Approval Hr'g Tr. at 42. Exh. 4.

the federal government in its V.C. Summer investigative efforts (which are continuing).[70] Courts have recognized the added value Class Counsel contribute when they are blazing a trail without a prior government action to "soften up" a defendant. See e.g., In re Urethane Antitrust Litig., 2016 WL 4060156, at *4 (D. Kan. July 29, 2016) (noting that the case was resolved "without the benefit of a government investigation or prosecution of members of the alleged antitrust conspiracy.").

Santee Cooper had enjoyed years of unchallenged rate increases related to the V.C. Summer construction. It took Class Counsel to step up and change the nuclear rate landscape. Through their dogged efforts, Class Counsel have created a common fund of $520 million for Santee Cooper customers, while securing judicial enforcement of Santee Cooper's Reform Plan that includes a four year rate freeze.

Class Counsel's efforts were truly multi-faceted, involving litigation in the South Carolina Circuit Court, Court of Appeals, and Supreme Court, as well as the Federal District Court and Court of Appeals. Class Counsel addressed 71 motions, took or defended 32 depositions, reviewed millions of pages of documents and were assembling their case for a multi-week trial when settlement occurred.[71] This Court's close supervision of the case gives it an excellent perspective to evaluate Counsel's effort.[72]

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[70] The first federal enforcement action involving this nuclear debacle was filed over two years after Class Counsel began their litigation, and a week after the settlement here. United States Securities and Exchange Commission v. SCANA Corp., et al, C.A. No.: 3:20-cv-00882-MGL (D.S.C., Filed Feb. 27, 2020).

[71] Affidavit of Jessica Fickling, ¶¶ 3, 4, 10. Exh. 3.

[72] Although Class Counsel are confident that the settlement is fair, reasonable, and adequate, and will, therefore, be finally approved, they cannot totally discount the possibility that the settlement might not be approved and they will need to resume litigation. In light of this possibility, they do not want their detailed internal work effort

6. The Customary Legal Fee for Similar Services

Our contingency fee system permits greater recovery for successful cases, thereby off-setting losses from unsuccessful cases. Without this incentive, many worthy, but impecunious plaintiffs would never have the opportunity for their day in court. Spartanburg Reg'l Health Servs., 2006 WL 8446464, at *4 ("Without some benefit or incentive to undertake such risks, competent counsel would not be attracted to handle cases of this nature"); Littlejohn v. State, 2002 WL 34454074, at *19 ("It is in society's interest that courts award adequate fees in complex cases of this type to encourage able and experienced counsel to undertake high-risk representation.").

In reversing a trial court's inadequate fee award that failed to recognize the value of the contingency fee system, the Fourth Circuit Court of Appeals cited "the important role played by contingency fees" in securing representation for those who cannot otherwise afford a lawyer. In re Abrams & Abrams, P.A., 605 F.3d 238, 249 (4th Cir. 2010). Certainly no individual Santee Cooper customers would have been able to afford to sue the Defendants. This risky class action was the customers' only hope. And there was certainly no guarantee of success. As Judge Joe Anderson has noted, "[i]t is not uncommon, despite excellent representation, that class claims are ultimately

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exposed. Accordingly, although Class Counsel are not basing their fee request on the hours expended, they will supply the Court in camera with detailed time records if the Court desires. Our Supreme Court has expressed approval of common fund fees based primarily on the results achieved, with a qualitative evaluation of the tasks undertaken and a comparison with fees awarded in similar cases, without requiring a detailed review of hours. See Condon v. State, 354 S.C. 634, 643-44, 583 S.E.2d 430, 435 (2003) (stating "[the Court] would be inclined to find that there is evidence to support the circuit court's findings," when the circuit court discussed counsel's efforts qualitatively without an in-depth analysis of hours recorded); see also Littlejohn v. State, 2002 WL 34454074 (S.C. Cir. Ct. Apr. 23, 2002).

unsuccessful." Montague v. Dixie Nat'l Life Ins. Co., 2011 WL 3626541, at *4 (D.S.C. Aug. 17, 2011).

The 15% fee calculated only on the class common fund is much lower than the customary contingency fee charged in complex cases of between 33⅓% and 50%. Anderson Memorial Hosp., slip op. at 7.[73] The class representatives' fee agreements were also within this customary range at 33⅓% and 40%.[74]

In Global Protection Corp. v. Halbersberg, 332 S.C. 149, 161, 503 S.E.2d 483, 489 (Ct. App. 1998), the Court of Appeals approved a one-third fee in an Unfair Trade Practices Act case, recognizing that the circuit court "found that contingent fee arrangements were common in complex cases and found that the typical range of such contingency fees was one-third to one-half the recovery." Judge John Hayes in Anderson Memorial Hosp. cited Global Protection in awarding a 33.33% class action fee. Slip op. at 7-8.[75] Similarly, in Condon v. State, the Supreme Court cited approvingly a federal class action case, "finding that fees ordinarily range from 20 percent to 30 percent of the common fund created." 354 S.C. at 644 n.8, 583 S.E.2d at 435 n.8 (internal citation omitted).

While South Carolina courts routinely approve 25% - 33⅓% common fund fees, some award higher percentages. In Fairey v. Exxon Corp., C.A. No. 94-CP-38-118 (Orangeburg Cty. Com. Pl. Oct. 9, 2003), the Court awarded a 40% fee on a $30 million common fund. The difficulty of issues in this case rivals that of any of the other South

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[73] Exh. 5.

[74] Exh. 15.

[75] Exh. 5.

Carolina class action cases discussed, and its prosecution in multiple forums (South Carolina Circuit Court, South Carolina Court of Appeals, South Carolina Supreme Court, Federal District Court, and the United States Court of Appeals) makes it uniquely more complex than virtually any other case in South Carolina history. Regardless of the exact fee ranges in the various opinions, a 15% fee is below every such range.

F. Experts in Complex Litigation Agree That a 15% Fee Is Eminently Reasonable Here

Attached hereto are the affidavits of three well-respected experts in complex litigation who agree that a 15% fee is well within the range of reasonableness in this case. These experts are: (1) a nationally recognized expert in complex litigation and the South Carolina *Lawyer's Weekly* 2020 "Lawyer of the Year" (Anne McGinness Kearse), Attach. 16; (2) the Dean of South Carolina Legal Ethics and long-time Professor at the University of South Carolina School of Law (John Freeman), Attach. 6; and (3) one of the most respected trial lawyers in the state (Thomas H. Pope, III), Attach. 17.

While the experts' affidavits speak for themselves, some representative excerpts highlight their support for the requested fee:

1. Anne McGinness Kearse

Anne McGinness Kearse, a *summa cum laude* graduate of the University of South Carolina School of Law, is a member of one of the nation's largest complex litigation firms, Motley Rice, LLC. Motley Rice has a long history of pursuing "impact" litigation, including in the areas of environmental contamination, representation of governmental entities, securities and fraud actions, antitrust, medical drugs and devices, aviation disasters and catastrophic personal injury.

Ms. Kearse's practice concentrates on complex litigation, including toxic exposures and personal injury. As one of the leading complex litigation attorneys in the state, Ms. Kearse was recently named the 2020 South Carolina *Lawyer's Weekly* "Lawyer of the Year." Her career includes involvement in litigation against the tobacco companies on behalf of the State Attorneys General, as well as other tobacco litigation. She has been trial counsel in large consolidated trials, and currently serves on her firm's Litigation Team representing numerous governmental entities targeting the misrepresentation by manufacturers and distributors of highly addictive opioids.

Ms. Kearse has known and worked with several of the Class Counsel in this case. Her practice mirrors that of Class Counsel in pursuing novel and risky cases on behalf of deserving clients.[76] Having examined the efforts of Class Counsel here, Ms. Kearse has opined:

> As my practice involves complex litigation, I have developed a good appreciation for the time and effort required to successfully prosecute such cases. They require a higher level of skill and, often, more intense effort than more routine litigation, even that of significant size.[77]
>
> . . .
>
> Class Counsel's efforts against those involved in the V.C. Summer Nuclear Project expansion fall well within the realm of extraordinary litigation effort, whether it be deemed "novel," "cutting edge," "path-breaking," or a similar, laudatory label. With a vigorous defense and through the twists and turns of the litigation, it was the perseverance of Class Counsel that was crucial to a successful resolution. Simply put, cases like this can be handled competently by only a select few lawyers. These lawyers must not only have the experience, tenacity, and energy to pursue the cases, but also the financial resources to see a multi-year, seven-figure battle through to conclusion.[78]

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[76] Affidavit of Anne McGinness Kearse, ¶¶ 1-9. Exh. 16.

[77] Affidavit of Anne McGinness Kearse, ¶ 9. Exh. 16.

[78] Affidavit of Anne McGinness Kearse, ¶ 10. Exh. 16.

. . .

> The importance of Class Counsel's ability to finance the litigation effort cannot be overstated. Defendants and their counsel are well aware of who can and who cannot sustain a multi-year effort against them.[79]

. . .

> I am familiar with contingency fees in complex litigation, including class actions. From my experience over the years, I can say without hesitation that a 15% contingency fee in a case of this extraordinary difficulty is at the bare minimum, if not below, the reasonable range of fees for such an effort. Every day, lawyers across the country are receiving one-third contingency fees in cases that are much less complex and difficult than the one these Class counsel undertook.[80]

. . .

> My firm, like many of the Class Counsel firms, operates primarily on a contingency fee basis. This contingency fee system, unique to American jurisprudence, requires that ample fees be awarded in successful cases so that Plaintiffs' lawyers will have the resources and incentive to undertake risky cases where losses result in no fee and loss of expense money advanced as well. . . . Contingency fees even the playing field by allowing Plaintiffs' lawyers to spend what is necessary to sustain an often-extended discovery effort to root out relevant evidence and prepare it for trial where a plaintiff without means can present his or her case to a jury on an equal footing with well-to-do corporations.[81]

2. John Freeman

Professor Freeman is a distinguished Professor Emeritus at the University of South Carolina School of Law where he has been a faculty member for 47 years. He is an expert in numerous subjects including legal ethics, which he taught for 35 years at the USC Law School and at numerous CLE programs. He has lectured on the standards applicable to legal fees and conduct on many occasions. He has testified in numerous class actions as an expert witness on issues including the reasonableness of fees and

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[79] Affidavit of Anne McGinness Kearse, ¶ 11. Exh. 16.

[80] Affidavit of Anne McGinness Kearse, ¶ 13. Exh. 16.

[81] Affidavit of Anne McGinness Kearse, ¶ 14. Exh. 16.

expenses sought by Class Counsel. In connection with reviewing Class Counsel's fee application in this matter, Professor Freeman has consulted with Class Counsel, studied the facts and legal issues raised, and reviewed applicable cases.[82] Professor Freeman's opinions, which are contained in more detail in his affidavit, include the following:

> This lawsuit and its related cases represent a huge mass of brutal, big-case litigation without parallel in the annals in South Carolina's courts. The litigation has produced a written record reflecting supreme tenacity by counsel for both sides.[83]
>
> . . .
>
> The record shows this legal battle to be the courtroom equivalent of a heavy-weight championship prize fight, with every litigant being represented by top-flight legal counsel bent on delivering excellent client service.[84]
>
> . . .
>
> Proof of this trail of hard work is evidenced by a scorched-earth path running through the Circuit Court, the South Carolina Supreme Court, in the South Carolina Federal District Court, and in the Fourth Circuit Court of Appeals.[85]
>
> . . .
>
> [T]he laborious nature of this litigation is evident from the voluminous record already generated. The Defendants gave no quarter. They had a right to play hardball every step of the way leading to settlement, and they did so. For this they cannot be faulted. Their strenuous efforts are illustrated by court records chock full of motions and memoranda making every conceivable argument seeking to undo and derail Plaintiffs' case.[86]
>
> . . .
>
> It is important to note that the work done by Class Counsel was not done in a genteel way, during "banker's hours." Sifting through vast amounts of data was extremely labor intensive and called for considerable overtime work. . . . The data generated to support this litigation are voluminous. That volume of needed data came at a large cost. To date, Plaintiffs' Counsel have made a litigation cost investment of over $1.5 million, and those costs

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[82] Affidavit of John Freeman, ¶¶ 1-5. Exh. 6.

[83] Affidavit of John Freeman, ¶ 6. Exh. 6.

[84] Affidavit of John Freeman, ¶ 7. Exh. 6.

[85] Affidavit of John Freeman, ¶ 16. Exh. 6.

[86] Affidavit of John Freeman, ¶ 22. Exh. 6.

are climbing. Few if any groups of plaintiffs' lawyers in South Carolina have the wherewithal and courage to advance such a large sum in pursuit of a hard and risky case where reimbursement is by no means assured.[87]

. . .

I emphasize that this case was difficult on virtually every possible level. Concluding it successfully is a tribute to Class Counsel's tenacity, special competence, zeal, attention to sound ethics, and professionalism.[88]

. . .

It is obvious to anyone familiar with litigation in South Carolina that Plaintiffs have had the benefit of an All-Star lineup of leading lawyers. They are all consummate professionals. I have dealt with them numerous times. I have always been impressed by their drive, ingenuity, thoughtfulness, and brutal, unstinting determination to do everything needed to protect and benefit their clients.[89]

. . .

Next to the 20-year payout to the State by the cigarette companies totaling $1.7 billion, this stands as the largest cash recovery in South Carolina litigation history. This result – a $520 million settlement fund, is a fund so huge it approximates the total sum of actual damages that would have been realized by a victory at trial . . . This wonderful result in the form of a huge cash payout and future savings to Santee Cooper customers was achieved only after a titanic struggle with the team of defense counsel which, as noted above, consisted of firm and "big case" lawyers having enviable reputations who are personally known by me to be very excellent attorneys.[90]

. . .

I consider the fee reasonable in light of all relevant facts, including the delay in payment, the staggering amount of work involved, the excellent result, and the fact that counsel had to litigate strenuously and at length in multiple forums to advance the interests of the class.[91]

. . .

Here, the fee sought by Class Counsel is more than fair when compared to those approved previously by South Carolina state court judges and Federal District Court judges. Likewise, based on my knowledge, training,

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[87] Affidavit of John Freeman, ¶ 34. Exh. 6.

[88] Affidavit of John Freeman, ¶ 38. Exh. 6.

[89] Affidavit of John Freeman, ¶ 56. Exh. 6.

[90] Affidavit of John Freeman, ¶ 62. Exh. 6.

[91] Affidavit of John Freeman, ¶ 65. Exh. 6.

background and experience, the fees sought by Class Counsel are clearly reasonable when viewed from a national perspective.[92]

3. Thomas H. Pope, III

Mr. Pope is one of the most respected trial lawyers in South Carolina, having tried over 100 cases to conclusion during his 45-year career. His experience is both broad and deep, including cases involving products liability, shareholder rights, professional negligence, antitrust, eminent domain, and environmental pollution. During his career, he has been involved in both prosecuting and defending numerous class actions. Significantly, Mr. Pope previously served as defense counsel in this case for a former Santee Cooper director.[93] As such, he has first-hand knowledge of the complexities of the litigation, the tenacity of the defense effort, and the vigor of Class Counsel's prosecution.

Having supplemented his personal experience in the case with an extensive review of the record, Mr. Pope has stated:

> [C]lass counsel in Cook were faced with almost insurmountable obstacles in their effort to obtain a monetary recovery from, on the one hand, a state agency that claimed any recovery would have to be paid from the very ratepayers who were the plaintiff class members, and, on the other hand, SCE&G emboldened by strong legal defenses and no contractual privity with members of the class.[94]
>
> . . .
>
> In the instant case, however, through diligent discovery practice and a series of successful motions to compel, class counsel developed information and documents which showed that, long before Bechtel, SCE&G commissioned at least two other "independent" consultants to specifically assess SCE&G's role on the Project. KPMG issued a report in

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[92] Affidavit of John Freeman, ¶ 69. Exh. 6.

[93] Mr. Pope received clearance from his client to provide an expert affidavit in this matter. Affidavit of Thomas H. Pope, III, ¶ 4(j). Exh. 17.

[94] Affidavit of Thomas H. Pope, III, ¶ 17. Exh. 17.

2009 and Price Waterhouse Coopers issued a series of reports from 2010 through 2011. These reports revealed that all of the deficiencies and gross mismanagement set forth in the 2016 Bechtel Report were well-known to SCE&G as early as 2010.[95]

. . .

The depositions taken by class counsel show that exiting the project before the Full Notice to Proceed in April 2012 would have saved many millions of dollars in project financing costs, and billions of dollars of future damages, but neither SCE&G nor Santee Cooper gave serious consideration to early abandonment despite the assessments by KPMG and Price Waterhouse Coopers.[96]

. . .

This case was without precedent. It was based on novel theories and opposed by tenacious, experienced, and highly respected defense lawyers. To call the case difficult would be an understatement.[97]

. . .

This return [of $520 million] to the class members, one of the highest common fund recoveries in our state's history, is unparalleled in South Carolina class action practice. I am aware of no South Carolina class action, state or federal, where the class has achieved such a stupendous outcome. The beneficial result was made possible because of the focused, full court press applied by the diligent hard work of experienced class counsel, which positioned the case into a posture for success.[98]

. . .

I regard the beneficial results achieved by class counsel as the most significant factor justifying full approval of the Fee Application.[99]

. . .

One of the most difficult aspects of this case was facing defense firms who were highly adept, skillful, and accomplished in their own right. I will not comment on the lawyers on the defense team individually except to say Nelson Mullins is likely the premier defense firm in South Carolina. They represented Santee Cooper well . . . Counsel at King & Spalding are likewise excellent and consummate trial lawyers on both the regional and national stage. They advanced the defense of SCE&G with zeal and

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[95] Affidavit of Thomas H. Pope, III, ¶ 20. Exh. 17.

[96] Affidavit of Thomas H. Pope, III, ¶ 21. Exh. 17.

[97] Affidavit of Thomas H. Pope, III, ¶ 37. Exh. 17.

[98] Affidavit of Thomas H. Pope, III, ¶ 50. Exh. 17.

[99] Affidavit of Thomas H. Pope, III, ¶ 51. Exh. 17.

> experience, and this made class counsel work all the harder. The fact that defense counsel were exceptionally skillful and diligent is a significant factor in assessing the fee request of class counsel, their opponents.[100]
>
> . . .
>
> This case was not based on settled law. It was risky at inception and from the beginning the potential of prevailing was uncertain. Of the nine class action cases in which I have served as counsel . . ., three were unsuccessful for the plaintiff: two were not certified; and, one was dismissed on summary judgment for the defendant.[101]
>
> . . .
>
> It is my opinion that a 15% fee here is at the low end of the range for a reasonable fee. Even though not requested by class counsel, a 25% fee would be fully justified and supported under the facts set forth herein.[102]

These expert opinions provide additional support for the reasonableness of the requested fee.

V. CLASS COUNSEL ARE ENTITLED TO RECOVER THEIR OUT OF POCKET EXPENSES

In the course of representing the classes, Counsel incurred $1,543,893.08 in out-of-pocket expenses. As the attached affidavit of Class Counsel states, these expenses were reasonably incurred in prosecuting the litigation involving the Project.[103] It is appropriate that the class bear the costs of the effort on its behalf. In re Pool Prod. Distrib.

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[100] Affidavit of Thomas H. Pope, III, ¶ 74. Exh. 17.

[101] Affidavit of Thomas H. Pope, III, ¶ 84. Exh. 17.

[102] Affidavit of Thomas H. Pope, III, ¶ 89, n.2. Exh. 17.

[103] See Affidavit of Jerry Hudson Evans, ¶ 7. Exh. 18. Class Counsel have provided a summary expense affidavit that includes the expenses of counsel in Glibowski v. SCANA, et al., C.A. No. 18-cv-00273-TLW (D.S.C.), which was settled as part of the litigation. They will provide the expense detail to the Court for in camera review if the Court desires.

Mkt. Antitrust Litig., MDL No. 2328, 2015 WL 4528880, at *18 (E.D. La. July 27, 2015); Anderson Memorial Hosp., slip op. at 8.[104]

CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court:

1. Approve an attorneys' fee of 15% of the common fund;[105] and
2. Award reimbursement of class expenses in the amount of $1,543,893.08.[106]

Respectfully Submitted,

Dated: May 29, 2020

/s/ Daniel A. Speights

Daniel A. Speights (SC Bar #5207)
A. Gibson Solomons, III (SC Bar #68291)
SPEIGHTS & SOLOMONS, LLC
100 Oak Street, East
Hampton, SC 29924
Telephone: 803.943.4444
dspeights@speightsandsolomons.com
gsolomons@speightsandsolomons.com

J. Preston Strom, Jr. (SC Bar #5400)
Jessica L. Fickling (SC Bar #100161)
John R. Alphin
STROM LAW FIRM, LLC
2110 Beltline Boulevard
Columbia, SC 29204
Telephone: 803.252.4800
petestrom@stromlaw.com
jfickling@stromlaw.com
jalphin@stromlaw.com

[104] Exh. 5.

[105] To be divided among Counsel as set forth in Exh. 22.

[106] This is the current expense figure. Counsel expect to have additional expenses connected with the final approval process and common fund administration for which they will seek approval for reimbursement.

Clayton B. McCullough (SC Bar #13722)
Ross A. Appel (SC Bar #79149)
McCULLOUGH KHAN, LLC
359 King St., Ste. 200
Charleston, SC 29401
Telephone: 843.937.0400
clay@mklawsc.com
ross@mklawsc.com

James L. Ward, Jr. (SC Bar #13453)
Ranee Saunders (SC Bar #100073)
Whitney Harrison (SC Bar #100111)
McGOWAN, HOOD & FELDER, LLC
321 Wingo Way, Suite 103
Mt. Pleasant, SC 29464
Telephone: 843.388.7202
jward@mcgowanhood.com
rsaunders@mcgowanhood.com
wharrison@mcgownhood.com

Terry E. Richardson, Jr. (SC Bar #4721)
Edward J. Westbrook (SC Bar #6040)
Jerry H. Evans (SC Bar #11658)
Daniel S. Haltiwanger (SC Bar #15705)
Theodore Hargrove, II (SC Bar # 102728)
RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
P.O. Box 1368
Barnwell, SC 29812
Telephone: 803.541.7850
trichardson@rpwb.com
ewestbrook@rpwb.com
jevans@rpwb.com
dhaltiwanger@rpwb.com
thargrove@rpwb.com

Gregory M. Galvin (SC Bar #73988)
GALVIN LAW GROUP, LLC
P.O. Box 887
Bluffton, SC 29910
Telephone: 843.227.2231
ggalvin@galvinlawgroup.com

J. Edward Bell
BELL LEGAL GROUP, LLC
219 Ridge Street
Georgetown, SC 29440
Telephone: 843.546.2408
ebell@edbelllaw.com

Vincent A. Sheheen (SC Bar #11552)
SAVAGE ROYALL & SHEHEEN, L.L.P.
P.O. Drawer 10
Camden, SC 29021
Telephone: 803.432.4391
vsheheen@thesavagefirm.com

COUNSEL FOR PLAINTIFFS

Joining in Petition:

Kenneth M. Suggs, (Fed I.D. NO. 3422)
Gerald D. Jowers, Jr. (Fed I.D. NO. 8025)
Patrick A. Thronson (pro hac vice)
JANET, JANET & SUGGS, LLC
500 Taylor St.
Columbia, SC 29201
Telephone: 803.726.0050
ksuggs@myadvocates.com
gjowers@myadvocates.com
pthronson@JJSjustice.com

Kenneth F. McCallion (pro hac vice)
McCALLION & ASSOCIATES LLP
100 Park Avenue – 16th floor
New York, New York 10017
Telephone: 646.366.0884
kfm@mcccallionlaw.com

Thomas A. Holman (pro hac vice)
HOLMAN LAW, P.C.
99 Park Avenue, Suite 2600
New York, New York 10016
Telephone: 212.481.1336
taholman@holmanlawoffice.com

Brian C. Gambrell (Fed. Id. No. 7632)
THE LAW OFFICES OF
JASON E. TAYLOR, P.C.
Office Address:
810 Dutch Square Blvd, Suite 112
Columbia, SC 29210
Mailing Address:
P.O. Box 2688
Hickory, NC 28603
Telephone: 800.351.3008
bgambrell@jasonetaylor.com

COUNSEL FOR Glibowski v. SCANA, et al.

EXHIBIT LIST

1. Affidavit of Gregory M. Galvin (May 14, 2020)
2. Affidavit of John R. Alphin (May 13, 2020)
3. Affidavit of Jessica L. Fickling (April 29, 2020)
4. Preliminary Approval Hearing Transcript (March 17, 2020)
5. Order in Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008)
6. Affidavit of John Freeman (May 26, 2020)
7. Order in Newton v. Duke Energy Florida, LLC, No. 16-CV-60341-WPD (S.D. Fla. 2016)
8. Orders in Biloxi Freezing & Processing, Inc., et al. v. Mississippi Power Co., et al., C.A. No. A2401-2016-00077 (Miss. Cir. Ct. June 23, 2017) and No. 2017-CA-00984-SCT (Miss. July 13, 2018)
9. VC Summer – Project Governance Review Excerpts (July 2011)
10. Steve Byrne Deposition Excerpts (Feb. 17, 2020)
11. Michael Crosby Deposition Excerpts (June 20-21, 2019)
12. Michael Crosby Email to Lonnie Carter (March 5, 2014)
13. Affidavit of Vincent A. Sheheen (May 14, 2020)
14. A.P. News Article regarding South Carolina Tobacco Settlement (April 22, 2019)
15. Class Representative Contracts of Representation (Aug. 21, 2017, Feb. 13, 2018)
16. Affidavit of Anne McGinness Kearse (May 22, 2020)
17. Affidavit of Thomas H. Pope, III (May 19, 2020)
18. Affidavit of Jerry Hudson Evans (May 29, 2020)
19. Affidavit of Jessica S. Cook (May 6, 2020)
20. Affidavit of Chris Kolbe (April 23, 2020)
21. William Cherry Email to Bill McCall (April 30, 2010)
22. Fee Division Schedule

Exh. 1

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	CASE NO. 2019-CP-23-06675 **AFFIDAVIT OF GREGORY MICHAEL GALVIN, Esq.**

Gregory Michael Galvin, Esq. being duly sworn, deposes and says:

1. I am a South Carolina licensed attorney with the Galvin Law Group, LLC. I am one of the co-counsel for the Class in the above-captioned matter.

2. One of my assignments during the course of the litigation has been to investigate the money spent by Defendants on salary and other benefits for the executives of Defendants South Carolina Electric and Gas Company and SCANA Corporation (collectively "SCANA") and Santee Cooper ("Santee") during the time when these companies were promoting, building, and eventually abandoning the V.C. Summer Nuclear Project.

3. In the course of my work, I received information in discovery from the Office of Regulatory Staff and researched public sources concerning these compensation issues. Where feasible, I have cross-checked information provided in discovery against publicly available information on these Defendants' executives' compensation.

SCANA

4. Based on the information provided to me, I have determined that Defendant SCANA paid its top five highest paid senior executives (including President, CEO, Executive Vice President, Senior Vice Presidents, President of PSNC, Controller) a total of One Hundred Twenty-Three Million Four Hundred Forty-Five Thousand and Three Hundred Thirty-Five 00/100ths Dollars ($123,445,335.00) during the years 2008 through 2017. This compensation, broken down by year, is as follows:

Year	Compensation	Exhibit
2008	$11,548,593.00	A
2009	$11,467,875.00	A
2010	$11,161,828.00	A
2011	$11,938,892.00	B
2012	$12,010,338.00	C
2013	$12,486,177.00	C
2014	$13,957,060.00	C
2015	$13,061,930.00	D
2016	$13,998,984.00	D
2017	$11,813,658.00	D

5. Looking at just those executives at the very top of the SCANA hierarchy, I have determined that the highest paid Three (3) Executives of SCANA were paid a total of Ninety-Five Million Six Hundred Forty-Eight Thousand Eight Hundred Nineteen Dollars ($95,648,819.00) during 2008 to 2017. This is broken down by year as follows:

Year	Compensation	Exhibit
2008	$8,906,154.00	A
2009	$8,709,211.00	A
2010	$8,518,962.00	A
2011	$9,159,998.00	B
2012	$9,050,049.00	C
2013	$9,410,760.00	C
2014	$10,602,614.00	C
2015	$10,452,715.00	D
2016	$11,271,819.00	D
2017	$9,566,537.00	D

MERGER RELEATED COMPENSATION

6. In addition to the aforementioned compensation, SCANA provided One Hundred Ten Million Seven Hundred Thousand 00/100ths Dollars ($110,700,000.00) into the SCANA Corporation Executive Benefit Plan Trust (the "Trust Fund") to pay themselves compensation if the SCANA leadership lost their jobs due to the merger with Dominion Energy.[1]

7. Pursuant to the terms of the merger, the top six executive officers of SCANA were scheduled to receive the following compensation totaling Twenty-Four Million One Hundred Forty-Seven Thousand Nine Hundred Thirty-One Dollars ($24,147,931.00). The breakdown for this compensation is in the table below.

Named Executive Officer	Cash ($)	Equity($)	Pension/NQDC ($)	Perquisites/ Benefits($)	Tax Reimbursement ($)	Other ($)	Total ($)
K. B. Marsh	$ 0	$ 3,058,911	$ 0	$ 0	$ 0	$ 0	$ 3,058,911
J. E. Addison	$ 5,297,314	$ 3,599,065	$ 821,648	$ 0	$ 0	$ 0	$ 9,718,027
S. A. Byrne	$ 0	$ 1,111,410	$ 0	$ 0	$ 0	$ 0	$ 1,111,410
W. K. Kissam	$ 2,369,140	$ 1,343,380	$ 334,939	$ 0	$ 0	$ 0	$ 4,047,459
J. B. Archie	$ 1,830,563	$ 1,152,695	$ 218,108	$ 0	$ 0	$ 0	$ 3,201,366
I. N. Griffin	$ 2,000,089	$ 756,911	$ 253,758	$ 0	$ 0	$ 0	$ 3,010,758

(See Exhibit E – SCANA Proxy Statement dated June 8, 2018)

[1] See the Testimony of Iris Nicole Griffin, the CFO and Treasurer of SCANA., before the South Carolina Public Service Commission on November 12, 2018 (Page 119).

8. During the settlement of the Cleckley, et al. vs. SCANA class action the Trust Fund was paid to the ratepayers as a portion of the settlement.

9. Upon information and belief, Dominion Energy, Inc., paid the SCANA executives the monies which were due from the Trust Fund.

SANTEE COOPER

10. For Defendant Santee, I have examined the available information concerning its executives' salaries and compensation, including documents produced in discovery and newspaper reports. However, it is noted that Santee Cooper is owned by the State of South Carolina. As a result, Santee does not file with the Securities and Exchange Commission ("SEC") and does not file with the South Carolina Public Service Commission for approvals and rate adjustments. As a result, information on the Company is not as readily available as SCANA.

11. After extensive research, I have determined the executives' salaries and compensation from documents provided by Santee to the Office of Regulatory Staff and publicly accessible information. My research revealed the salary information for Santee's Executives (President, CFO, Senior, Executive and Special Vice Presidents) received a total of Twenty-Eight Million Sixty-Eight Thousand Five Hundred Sixty-One 00/100ths Dollars ($28,068,561.00) from 2008 through 2017. The compensation received by this group of executives is broken down by year below.

2008	$1,956,947	F
2009	$1,909,811	F
2010	$2,324,344	F
2011	$3,053,524	F
2012	$2,560,557	F
2013	$2,860,100	F
2014	$3,090,495	F
2015	$3,116,083	F
2016	$3,614,301	F
2017	$3,582,399	G

12. In addition to the compensation described in the aforementioned table, Santee paid monies into a deferred compensation plan for the executives. On June 30, 2017, the balances in the deferred compensation plan for a total of One Million Two Hundred Sixty-Six Thousand One Hundred Eighty-Nine Dollars ($1,266,189.00) and are broken down below by executive (See Exhibit "H"):

Deferred Compensation Plan	Amount of Deferred Compensation
Lonnie Carter	$858,572.00
Marc Tye	$113,709.00
Jeff Armfield	$93,674.00
Pamela Williams	$60,068.00
Mike Baxley	$54,714.00
Michael Crosby	$46,805.00
Arnold Singleton	$24,349.00
Dom Maddalone	$14,298.00

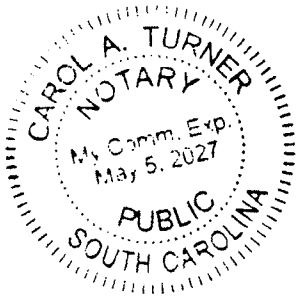
13. In addition to the deferred compensation described above, Lonnie Carter, the Ex-President of Santee, also will receive significant retirement benefits. Mr. Carter will receive Three Hundred Forty-Four Thousand Five Hundred Seventy-Two Dollars ($344,572.00) for life from the state retirement system and will be paid up to Four Hundred Fifty-Five Thousand One Hundred Ninety-Two Dollars ($455,192.00) annually for 20 years through a separate executive retirement plan with Santee. (See South Carolina Policy Council, Spring 2018 - Exhibit "I")

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Gregory Michael Galyn, Esq.

SWORN TO AND SUBSCRIBED BEFORE ME
On 14th of May, 2020.

Carol A. Turner
Notary Public ~~of South~~ Carolina
My commission ends: 5.5.2027



Exh. A

DEF 14A 1 a2182313zdef14a.htm DEF 14A

QuickLinks -- Click here to rapidly navigate through this document

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to §240.14a-12

SCANA Corporation

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

SUMMARY COMPENSATION TABLE

The following table summarizes information about compensation paid or accrued during 2007 and 2006 to our Chief Executive Officer, our Chief Financial Officer and our three next most highly compensated executive officers during 2007. (As noted in the Compensation Discussion and Analysis, we refer to these persons as our Named Executive Officers.)

Name and Principal Position	Year	Salary ($)	Bonus ($)[1]	Stock Awards ($)[2]	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)[3]	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)[4]	All Other Compensation ($)[5]	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
W. B. Timmerman, President and Chief Executive Officer	2007	$ 1,043,408	$ 177,956	$ 1,761,331	—	$ 444,890	$ 330,605	$ 121,481	$ 3,879,671
	2006	$ 1,002,700	$ 170,459	$ 301,759	—	$ 426,148	$ 274,724	$ 73,629	$ 2,249,419
J. E. Addison, Senior Vice President Chief Financial Officer	2007	$ 303,846	$ 36,600	$ 252,274	—	$ 91,500	$ 41,300	$ 29,242	$ 754,762
	2006	$ 278,990	$ 27,916	$ 37,505	—	$ 69,789	$ 21,981	$ 30,091	$ 466,272
K. B. Marsh, Senior Vice President	2007	$ 548,115	$ 71,500	$ 613,229	—	$ 178,750	$ 113,085	$ 53,730	$ 1,578,409
	2006	$ 516,183	$ 66,916	$ 106,749	—	$ 167,290	$ 59,934	$ 63,816	$ 980,888
G. J. Bullwinkel, Jr., Senior Vice President	2007	$ 443,462	$ 53,400	$ 397,642	—	$ 133,500	$ 159,343	$ 44,950	$ 1,232,297
	2006	$ 425,000	$ 51,000	$ 70,347	—	$ 127,500	$ 83,324	$ 49,655	$ 806,826
S. A. Byrne, Senior Vice President	2007	$ 418,492	$ 50,400	$ 375,124	—	$ 126,000	$ 62,519	$ 42,093	$ 1,074,628
	2006	$ 400,400	$ 48,048	$ 66,274	—	$ 120,120	$ 40,226	$ 45,550	$ 720,618

(1) Discretionary bonus awards as permitted under the 2007 Short-Term Annual Incentive Plan, which are discussed in further detail under "— Compensation Discussion and Analysis — Short-Term Annual Incentive Plan — Discretionary Bonus Award" on page 26.

(2) The information in this column relates to performance share awards (liability awards) under the Long-Term Equity Compensation Plan. This plan is discussed under "— Compensation Discussion and Analysis — Long-Term Equity Compensation Plan." The figures for 2007 reflect accruals for all three performance plan cycles which were in operation during that year. The amounts in this column are the dollar amounts recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R. The assumptions made in valuation of stock awards are set forth in Note 3 to our audited financial statements for the year ended December 31, 2007, which are included in our 2007 Form 10-K and this proxy statement.

The 2006 information in this column also reflects the amounts recognized for financial reporting purposes in accordance with FAS 123R. However, amounts reported in this column for 2006 do not reflect the reversal in 2006 of previously expensed portions of awards to the extent those expenses had been recorded in periods prior to 2006. As such, the figures for 2006 reflect only the accrual of costs in 2006 related to the 2006-2008 plan cycle.

(3) Payouts under the 2007 Short-Term Annual Incentive Plan, based on our achieving our business objectives and our Named Executive Officers achieving their individual financial and strategic objectives, as discussed in further detail under "— Compensation Discussion and Analysis — Short-Term Annual Incentive Plan" on page 23.

(4) The aggregate change in the actuarial present value of each Named Executive Officer's accumulated benefits under SCANA's Retirement Plan and Supplemental Executive Retirement Plan from December 31, 2006 to December 31, 2007, determined using interest rate and mortality rate assumptions consistent with those used in our financial statements. These plans are discussed under "— Compensation Discussion and Analysis — Retirement and Other Benefit Plans" on page 30

(5) All other compensation paid to each Named Executive Officer, including company contributions to the 401(k) Plan and the Executive Deferred Compensation Plan, tax reimbursements with respect to perquisites or other personal benefits, and life insurance premiums on policies owned by Named Executive Officers. For 2007, the Company contributions to defined contribution plans were as follows: Mr. Timmerman — $100,511; Mr. Addison — $24,560; Mr. Marsh — $48,039; Mr. Bullwinkel — $38,206; and Mr. Byrne — $36,033. For 2007, tax reimbursements with respect to perquisites or other personal benefits were as follows: Mr. Bullwinkel — $369; and Mr. Byrne — $804. Neither life insurance premiums on policies owned by the Named Executive Officers nor perquisites exceeded $10,000 for any Named Executive Officer with the exception of Mr. Timmerman. Mr Timmerman's All Other Compensation includes perquisites of $14,449 consisting of expenses related to the Company provided medical examination and transportation to and from the medical examination on the Company plane, financial planning services, and travel expenses associated with his spouse occasionally accompanying him on business travel.

Exh. B

PRER14A 1 dprer14a.htm REVISED PRELIMINARY NOTICE AND PROXY

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Your **VOTE** is Important

SCANA Corporation 2011 Proxy Materials

Chairman's Letter to Shareholders,
Notice of 2011 Annual Meeting,
Proxy Statement for Annual Meeting,
Annual Financial Statements,
Management's Discussion and
Analysis and Related Annual
Report Information

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SUMMARY COMPENSATION TABLE

The following table summarizes information about compensation paid or accrued during 2010, 2009 and 2008 to our Chief Executive Officer, our Chief Financial Officer and our three next most highly compensated executive officers during 2010. (As noted in the Compensation Discussion and Analysis, we refer to these persons as our Named Executive Officers.)

Name and Principal Position (a)	Year (b)	Salary ($)[1] (c)	Bonus ($)[2] (d)	Stock Awards ($)[3] (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compensation ($)[4] (g)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)[5] (h)	All Other Compensation ($)[6] (i)	Total ($) (j)
W. B. Timmerman,	2010	$1,099,000	—	$2,472,753	—	$ 934,150	$ 375,319	$ 116,188	$4,997,410
Chief Executive Officer	2009	$1,099,000	—	$2,748,816	—	$ 700,613	$ 370,997	$ 113,932	$5,033,358
	2008	$1,094,985	$186,830	$3,047,611	—	$ 467,075	$ 334,694	$ 123,448	$5,254,643
J. E. Addison,	2010	$ 412,500	—	$ 515,637	—	$ 247,500	$ 50,995	$ 44,844	$1,271,476
Senior Vice President and	2009	$ 412,500	—	$ 573,173	—	$ 185,625	$ 92,033	$ 61,004	$1,324,335
Chief Financial Officer	2008	$ 385,048	$ 46,891	$ 577,730	—	$ 117,229	$ 43,676	$ 56,538	$1,227,112
K. B. Marsh,	2010	$ 580,000	—	$ 869,987	—	$ 377,000	$ 103,087	$ 57,631	$1,987,705
President and	2009	$ 580,000	—	$ 967,150	—	$ 282,750	$ 195,117	$ 83,084	$2,108,101
Chief Operating Officer	2008	$ 577,692	$ 75,400	$1,072,244	—	$ 188,500	$ 100,108	$ 55,229	$2,069,173
G. J. Bullwinkel, Jr.,	2010	$ 465,000	—	$ 581,256	—	$ 279,000	$ 161,761	$ 46,830	$1,533,847
Senior Vice President	2009	$ 465,000	—	$ 646,149	—	$ 209,250	$ 201,060	$ 46,293	$1,567,752
	2008	$ 463,462	$ 55,800	$ 716,373	—	$ 139,500	$ 150,445	$ 56,758	$1,582,338
S. A. Byrne,	2010	$ 445,000	—	$ 556,278	—	$ 267,000	$ 58,017	$ 45,095	$1,371,390
Executive Vice President	2009	$ 445,000	—	$ 618,351	—	$ 200,250	$ 114,044	$ 56,684	$1,434,329
	2008	$ 443,077	$ 53,400	$ 685,597	—	$ 133,500	$ 56,283	$ 43,470	$1,415,327

(1) No Named Executive Officers received base salary increases in 2009 or 2010. The difference between 2008 and 2009 annual salaries as reflected in the Summary Compensation Table is a result of the full 2008 salary increase being earned in 2009 as opposed to the partial year increase earned in 2008.

(2) Represents discretionary bonus awards, for 2008, as permitted under the Short-Term Annual Incentive Plan. No discretionary bonus awards were granted for 2009 or 2010.

(3) The information in this column relates to performance share, restricted stock, and restricted stock unit awards (liability awards) under the Long-Term Equity Compensation Plan. This plan is discussed under " — Compensation Discussion and Analysis — Long-Term Equity Compensation Plan" beginning on page 30. The amounts in this column represent the aggregate grant date fair value computed in accordance with FASB ASC Topic 718. The value of performance share awards is based on the probable outcome of performance conditions, consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. For 2010, the maximum values of the performance shares, assuming the highest levels of performance, would be as follows Mr. Timmerman $3,461,834; Mr. Addison $721,913; Mr. Marsh $1,218,023, Mr. Bullwinkel $813,752; and Mr. Byrne $778,769. The assumptions made in the valuation of stock awards are set forth in Note 9 to our audited financial statements for the year ended December 31, 2010, which are included in our Form 10-K for the year ended December 31, 2010, and this proxy statement.

(4) Payouts under the Short-Term Annual Incentive Plans were based on our achieving our business objectives and our Named Executive Officers achieving their individual financial and strategic objectives, as discussed in further detail under " — Compensation Discussion and Analysis — Short-Term Annual Incentive Plan" beginning on page 28.

(5) The aggregate change in the actuarial present value of each Named Executive Officer's accumulated benefits under SCANA's Retirement Plan and Supplemental Executive Retirement Plan from the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the covered fiscal year shown, determined using interest rate and mortality rate assumptions consistent with those used in our financial statements. These plans are discussed under " — Compensation Discussion and Analysis — Retirement and Other Benefit Plans" beginning on page 34, " — Defined Benefit Retirement Plan" beginning on page 43, " — Supplemental Executive Retirement Plan" beginning on page 43, and " — Potential Payments Upon Termination or Change in Control — Retirement Benefits — Supplemental Executive Retirement Plan" beginning on page 49.

(6) All other compensation paid to each Named Executive Officer, including Company contributions to the 401(k) Plan and the Executive Deferred Compensation Plan, imputed income for disability insurance and plane use, if any, tax reimbursements with respect to perquisites or other personal benefits, life insurance premiums on policies owned by Named Executive Officers, and perquisites that exceeded $10,000 in the aggregate for any Named Executive Officer. For 2010, the Company contributions to defined contribution plans were as follows: Mr. Timmerman $107,977; Mr. Addison $35,887; Mr. Marsh $51,765; Mr. Bullwinkel $40,455; and Mr. Byrne $38,715. For 2010, tax reimbursements with respect to perquisites or other personal benefits were as follows: Mr. Addison $1,170, and Mr. Byrne $376. Perquisites did not exceed $10,000 for any of our Named Executive Officers. Life insurance premiums on policies owned by the Named Executive Officers did not exceed $10,000 for any Named Executive Officer.

Exh. C

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement
- ☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- ☒ Definitive Proxy Statement
- ☐ Definitive Additional Materials
- ☐ Soliciting Material under Rule 14a-12

SCANA CORPORATION

(Name of registrant as specified in its charter)

(Name of person(s) filing proxy statement, if other than the registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.
- ☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
  - (1) Title of each class of securities to which transaction applies:
  - (2) Aggregate number of securities to which transaction applies:
  - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
  - (4) Proposed maximum aggregate value of transaction:
  - (5) Total fee paid:
- ☐ Fee paid previously with preliminary materials.
- ☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
  - (1) Amount Previously Paid:
  - (2) Form, Schedule or Registration Statement No.:

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SUMMARY COMPENSATION TABLE

The following table summarizes information about compensation paid or accrued during 2011, 2010 and 2009 to our Chief Executive Officer, our former Chief Executive Officer, our Chief Financial Officer and our three next most highly compensated executive officers during 2011. (As noted in the Compensation Discussion and Analysis, we refer to these persons as our Named Executive Officers.)

Name and Principal Position (a)	Year (b)	Salary ($)[1] (c)	Bonus ($)[2] (d)	Stock Awards ($)[3] (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compensation ($)[4] (g)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)[5] (h)	All Other Compensation ($)[6] (i)	Total ($) (j)
K. B. Marsh,	2011	$ 703,923	$ 0	$1,319,474	—	$ 344,866	$ 176,145	$ 68,947	$2,613,355
Chief Executive Officer,	2010	$ 580,000	$ 0	$ 869,987	—	$ 377,000	$ 103,087	$ 57,631	$1,987,705
President and	2009	$ 580,000	$ 0	$ 967,150	—	$ 282,750	$ 195,117	$ 83,084	$2,108,101
Chief Operating Officer									
W. B. Timmerman,	2011	$1,185,398	$ 0	$2,526,783	—	$ 721,631	$ 430,153	$ 152,866	$5,016,831
Former Chief Executive	2010	$1,099,000	$ 0	$2,472,753	—	$ 934,150	$ 375,319	$ 116,188	$4,997,410
Officer	2009	$1,099,000	$ 0	$2,748,816	—	$ 700,613	$ 370,997	$ 113,932	$5,033,358
J. E. Addison,	2011	$ 459,952	$ 0	$ 576,631	—	$ 209,250	$ 85,830	$ 50,813	$1,382,476
Senior Vice President and	2010	$ 412,500	$ 0	$ 515,637	—	$ 247,500	$ 50,995	$ 44,844	$1,271,476
Chief Financial Officer	2009	$ 412,500	$ 0	$ 573,173	—	$ 185,625	$ 92,033	$ 61,004	$1,324,335
G. J. Bullwinkel, Jr.,	2011	$ 465,000	$ 0	$ 576,631	—	$ 209,250	$ 205,457	$ 73,474	$1,529,812
Senior Vice President	2010	$ 465,000	$ 0	$ 581,256	—	$ 279,000	$ 161,761	$ 46,830	$1,533,847
	2009	$ 465,000	$ 0	$ 646,149	—	$ 209,250	$ 201,060	$ 46,293	$1,567,752
S. A. Byrne,	2011	$ 463,077	$ 0	$ 576,631	—	$ 209,250	$ 97,692	$ 49,768	$1,396,418
Executive Vice President	2010	$ 445,000	$ 0	$ 556,278	—	$ 267,000	$ 58,017	$ 45,095	$1,371,390
	2009	$ 445,000	$ 0	$ 618,351	—	$ 200,250	$ 114,044	$ 56,684	$1,434,329
R. T. Lindsay	2011	$ 348,077	$ 0	$ 381,934	—	$ 144,375	$ 50,723	$ 37,530	$ 962,639
Senior Vice President	2010	$ 330,000	$ 0	$ 362,957	—	$ 181,500	$ 39,046	$ 57,404	$ 970,907
	2009	$ 272,885	$ 0	$ 403,507	—	$ 113,687	$ 21,307	$ 91,722	$ 903,108

(1) Base salary increases for our Named Executive Officers are discussed under " — Compensation Discussion and Analysis — Base Salaries" beginning on page 26

(2) No discretionary bonus awards under the Short-Term Annual Incentive Plan were granted for 2009, 2010, or 2011.

(3) The information in this column relates to performance share and restricted stock unit awards (liability awards) under the Long-Term Equity Compensation Plan. This plan is discussed under " — Compensation Discussion and Analysis — Long-Term Equity Compensation Plan" beginning on page 29. The amounts in this column represent the aggregate grant date fair value computed in accordance with FASB ASC Topic 718. The value of performance share awards is based on the probable outcome of performance conditions, consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. For 2011, the maximum values of the performance shares, assuming the highest levels of performance, would be as follows: Mr. Marsh $1,843,583; Mr. Timmerman $3,530,409, Mr. Addison $805,707, Mr. Bullwinkel $805,707; Mr. Byrne $805,707; and Mr. Lindsay $533,690. The assumptions made in the valuation of stock awards are set forth in Note 9 to our audited financial statements for the year ended December 31, 2011, which are included in our Form 10-K for the year ended December 31, 2011, and this proxy statement.

(4) Payouts under the Short-Term Annual Incentive Plan were based on the levels at which we achieved earnings per share and business objectives and at which our Named Executive Officers achieved their individual financial and strategic objectives, as discussed in further detail under " — Compensation Discussion and Analysis — Short-Term Annual Incentive Plan" beginning on page 26.

(5) The aggregate change in the actuarial present value of each Named Executive Officer's accumulated benefits under SCANA's Retirement Plan and Supplemental Executive Retirement Plan from the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the covered fiscal year shown, determined using interest rate and mortality rate assumptions consistent with those used in our financial statements. These plans are discussed under " — Compensation Discussion and Analysis — Retirement and Other Benefit Plans" beginning on page 33, " — Defined Benefit Retirement Plan" beginning on page 42, " — Supplemental Executive Retirement Plan" beginning on page 42, and " — Potential Payments Upon Termination or Change in Control — Retirement Benefits — Supplemental Executive Retirement Plan" beginning on page 48.

(6) All other compensation paid to each Named Executive Officer, including Company contributions to the 401(k) Plan and the Executive Deferred Compensation Plan, imputed income for disability insurance and plane use, if any, tax reimbursements with respect to perquisites or other

Exh. D

DEF 14A 1 d835104ddef14a.htm DEFINITIVE PROXY STATEMENT

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Index to Financial Statements

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material under Rule 14a-12

SCANA CORPORATION

(Name of registrant as specified in its charter)

(Name of person(s) filing proxy statement, if other than the registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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Index to Financial Statements

SUMMARY COMPENSATION TABLE

The following table summarizes information about compensation paid or accrued during 2014, 2013 and 2012 to our Chief Executive Officer, our Chief Financial Officer and our three next most highly compensated executive officers. (As noted in the "Compensation Discussion and Analysis," we refer to these persons as our Named Executive Officers.)

Name and Principal Position (a)	Year (b)	Salary ($)(1) (c)	Bonus ($)(2) (d)	Stock Awards ($)(3) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compensation ($)(4) (g)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)(5) (h)	All Other Compensation ($)(6) (i)	Total ($) (j)
K. B. Marsh	2014	$1,107,287	$200,894	$2,835,756	—	$ 1,004,469	$ 418,123	$ 143,919	$5,710,448
Chief Executive Officer, President and Chief Operating Officer	2013	$1,052,765	$239,159	$2,700,702	—	$ 956,637	$ 149,158	$ 136,066	$5,234,487
	2012	$1,000,000	$225,000	$2,460,789	—	$ 900,000	$ 295,453	$ 88,740	$4,969,982
J. E. Addison	2014	$ 574,254	$217,055	$1,029,468	—	$ 434,109	$ 200,323	$ 70,733	$2,525,942
Executive Vice President and	2013	$ 547,010	$ 96,469	$ 896,367	—	$ 385,875	$ 34,635	$ 83,066	$2,043,422
Chief Financial Officer	2012	$ 516,462	$ 91,875	$ 826,840	—	$ 330,750	$ 149,679	$ 50,066	$1,965,672
S. A. Byrne	2014	$ 574,254	$ 75,969	$1,029,468	—	$ 379,845	$ 230,725	$ 75,963	$2,366,224
Executive Vice	2013	$ 547,010	$192,938	$ 896,366	—	$ 385,875	$ 39,631	$ 71,031	$2,132,851
President	2012	$ 516,462	$183,750	$ 826,840	—	$ 367,500	$ 170,360	$ 49,483	$2,114,395
G. J. Bullwinkel Jr.	2014	$ 480,000	$ 57,600	$ 634,234	—	$ 288,000	$ 196,789	$ 190,091	$1,846,714
Senior Vice President	2013	$ 480,000	$ 72,000	$ 634,189	—	$ 288,000	$ 163,104	$ 56,775	$1,694,068
	2012	$ 477,865	$ 72,000	$ 614,191	—	$ 288,000	$ 185,864	$ 69,417	$1,707,337
R. T. Lindsay	2014	$ 425,131	$128,552	$ 566,135	—	$ 257,103	$ 81,198	$ 49,613	$1,507,732
Senior Vice President	2013	$ 404,369	$ 61,215	$ 539,224	—	$ 244,860	$ 66,699	$ 64,982	$1,381,349
and General Counsel	2012	$ 380,019	$ 57,750	$ 492,632	—	$ 231,000	$ 54,447	$ 37,104	$1,252,952

(1) Base salary increases for our Named Executive Officers are discussed under "— Compensation Discussion and Analysis — Base Salaries" beginning on page 30.

(2) Discretionary bonus awards were granted under the Short-Term Annual Incentive Plan. 2014 discretionary bonus awards are discussed in further detail under "— Compensation Discussion and Analysis — Short-Term Annual Incentive Plan — Discretionary Bonus Award" on page 33.

(3) The information in this column relates to performance share and restricted stock unit awards (liability awards) under the Long-Term Equity Compensation Plan. This Plan is discussed under "— Compensation Discussion and Analysis — Long-Term Equity Compensation Plan" beginning on page 34. The amounts in this column represent the aggregate grant date fair value of the awards computed in accordance with FASB ASC Topic 718. The value of performance share awards is based on the probable outcome of performance conditions, consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. For 2014, the grant date maximum values of the performance shares, assuming the highest levels of performance, would be as follows: Mr. Marsh $3,985,982; Mr. Addison $1,447,015; Mr. Byrne $1,447,015; Mr. Bullwinkel $891,480; and Mr. Lindsay $795,757. The assumptions made in the valuation of stock awards are set forth in Note 9 to our audited financial statements for the year ended December 31, 2014, which are included in our Form 10-K for the year ended December 31, 2014, and with this proxy statement.

(4) Payouts under the Short-Term Annual Incentive Plan were based on the levels at which we achieved growth in earnings per share and business objectives and at which our Named Executive Officers achieved their individual and business unit financial and strategic objectives, as discussed in further detail under " — Compensation Discussion and Analysis — Short-Term Annual Incentive Plan" beginning on page 31.

(5) The aggregate change in the actuarial present value of each Named Executive Officer's accumulated benefits under SCANA's Retirement Plan and Supplemental Executive Retirement Plan from the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the covered fiscal year shown, determined using interest rate and mortality rate assumptions consistent with those used in our financial statements. These plans are discussed under "— Compensation Discussion and Analysis — Retirement and Other Benefit Plans" beginning on page 39, "— Defined Benefit Retirement Plan" beginning on page 47, "— Supplemental Executive Retirement Plan" beginning on page 47, and "— Potential Payments Upon Termination or Change in Control — Retirement Benefits — Supplemental Executive Retirement Plan" beginning on page 53

(6) Includes all other compensation paid to each Named Executive Officer, including Company contributions to the 401(k) Plan and the Executive Deferred Compensation Plan, imputed income for disability insurance and aircraft use, if any, tax reimbursements with respect to perquisites or other personal benefits, life insurance premiums on policies owned by Named Executive Officers, and perquisites that exceeded $10,000 in the aggregate for any Named Executive Officer. For 2014, the Company contributions to defined contribution plans were as follows: Mr. Marsh $137,940; Mr. Addison $63,269; Mr. Byrne $69,057; Mr. Bullwinkel $50,400; and Mr. Lindsay $43,778. Perquisites that exceeded an aggregate of $10,000 for any of our Named Executive Officers were as follows. Mr. Bullwinkel $132,019, consisting of financial planning services totaling $13,893, an executive physical in the amount of $1,710, residential security system monitoring and maintenance totaling $1,508, expenses associated with relocation under our employee relocation programs at an aggregate incremental cost to us of $113,611, and a tax gross up of $1,297 related to his relocation. We valued the aggregate incremental cost of Mr. Bullwinkel's relocation by taking into account the difference between the purchase and sale price of the house, maintenance and repairs on the house prior to sale, fees and expenses of the relocation vendor, closing costs including real estate commissions, and moving expenses. Life insurance premiums on policies owned by the Named Executive Officers did not exceed $10,000 for any Named Executive Officer.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material under Rule 14a-12

SCANA CORPORATION
(Name of Registrant as Specified In Its Charter)

(Name of person(s) filing proxy statement, if other than the registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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SUMMARY COMPENSATION TABLE

The following table summarizes information about compensation paid or accrued during 2017, 2016 and 2015 to our Chief Executive Officer, our Chief Financial Officer and our three next most highly compensated executive officers. (As noted in the "Compensation Discussion and Analysis," we refer to these persons as our Named Executive Officers.) Mr. Archie was not a Named Executive Officer in 2015 or 2016.

Name and Principal Position (a)	Year (b)	Salary ($)(1) (c)	Bonus ($)(2) (d)	Stock Awards ($)(3) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compensation ($)(4) (g)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)(5) (h)	All Other Compensation ($)(6) (i)	Total ($) (j)
K. B. Marsh									
Chief Executive Officer,	2017	$1,267,057	—	$3,263,991	—	$ 0	$425,089	$279,038	$5,235,175
President and	2016	$1,216,901	—	$2,902,015	—	$1,432,431	$395,640	$161,817	$6,108,804
Chief Operating Officer	2015	$1,202,590	—	$2,763,823	—	$1,364,220	$251,586	$151,039	$5,733,258
J. E. Addison	2017	$ 657,652	—	$1,185,943	—	$ 0	$214,951	$ 82,086	$2,140,632
Executive Vice President and	2016	$ 631,619	—	$1,054,398	—	$ 619,574	$194,123	$ 81,160	$2,580,874
Chief Financial Officer	2015	$ 624,112	—	$1,004,157	—	$ 590,070	$102,816	$ 84,264	$2,405,419
S. A. Byrne	2017	$ 657,652	—	$1,185,943	—	$ 0	$227,615	$119,520	$2,190,730
Executive Vice President	2016	$ 631,619	—	$1,054,398	—	$ 619,574	$199,358	$ 77,192	$2,582,141
	2015	$ 624,112	—	$1,004,157	—	$ 531,063	$ 85,545	$ 69,161	$2,314,038
W. K. Kissam	2017	$ 400,068	—	$ 453,457	—	$ 0	$129,568	$ 45,097	$1,028,190
Senior Vice President	2016	$ 384,681	—	$ 403,139	—	$ 276,396	$112,099	$ 43,541	$1,219,856
	2015	$ 383,739	—	$ 387,644	—	$ 265,767	$ 38,396	$ 45,262	$1,120,808
J. B. Archie	2017	$ 397,182	—	$ 449,906	—	$ 0	$135,662	$ 45,756	$1,028,506
Senior Vice President									
R. T. Lindsay	2017	$ 232,389	—	$ 624,131	—	$ 0	$ 62,766	$299,329	$1,218,615
Senior Vice President	2016	$ 452,921	—	$ 560,366	—	$ 354,589	$ 87,243	$ 52,190	$1,507,309
and General Counsel	2015	$ 456,209	—	$ 544,044	—	$ 344,261	$ 88,881	$ 55,012	$1,488,407

(1) 2017 base salary increases for our Named Executive Officers are discussed under "— Compensation Discussion and Analysis — Base Salaries" beginning on page 32.

(2) No discretionary bonus awards were granted to any Named Executive Officers in 2017 under the Short-Term Annual Incentive Plan

(3) February 2017 grants of performance share and restricted stock unit awards (liability awards) under the Long-Term Equity Compensation Plan, as discussed under "— Compensation Discussion and Analysis — Long-Term Equity Compensation Plan" beginning on page 35. The amounts in this column represent the aggregate grant date fair value of the awards computed in accordance with FASB ASC Topic 718. The value of performance share awards is based on the probable outcome of performance conditions, consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. For 2017, the grant date maximum values of the performance shares, assuming the highest levels of performance, would be as follows: Mr. Marsh $4,618,062; Mr. Addison $1,677,930; Mr. Byrne $1,677,930; Mr. Kissam $641,554; Mr. Archie $636,596; and Mr. Lindsay $883,058. The assumptions made in the valuation of stock awards are set forth in Note 9 to our audited financial statements for the year ended December 31, 2017, which are included in our Form 10-K for the year ended December 31, 2017, and with this proxy statement.

Although the 2017 and 2016 Long-Term Equity Compensation awards in the table below are included in column (e) of the Summary Compensation Table at grant date fair value, a portion of these awards was forfeited as a result of Messrs Marsh, Byrne, and Lindsay's separations from service. The amounts in the table below represent the forfeited awards under the 2017-2019 and 2016-2018 Long-Term Equity Compensation Plan performance periods:

	2016	2017	Total Forfeited Award
K. B. Marsh	$ 661,265	$ 1,539,354	$ 2,200,619
S. A. Byrne	$ 240,259	$ 559,310	$ 799,569
R. T. Lindsay	$ 127,688	$ 294,352	$ 422,040

(4) Although all of our Named Executive Officers achieved at least a portion of their objectives under the Short-Term Annual Incentive Plan, our Board made a determination that no payout would be made even on earned awards. The Board's application of negative discretion on these awards is discussed in further detail under " — Compensation Discussion and Analysis — Short-Term Annual Incentive Plan" beginning on page 33.

(5) The aggregate change in the actuarial present value of each Named Executive Officer's accumulated benefits under SCANA's Retirement Plan and Supplemental Executive Retirement Plan from the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the audited financial statements for the covered fiscal year shown, determined using interest rate and mortality rate assumptions consistent with those used in our financial statements. These plans are discussed under "— Compensation Discussion and Analysis — Retirement and Other Benefit Plans" beginning on page 39, "— Defined Benefit Retirement Plan" beginning on page 48, "—

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A INFORMATION

**PROXY STATEMENT PURSUANT TO SECTION 14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO.)**

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material pursuant to §240.14a-12

SCANA CORPORATION
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

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Merger-Related Compensation

Named Executive Officer	Cash ($)(1)	Equity($)(2)	Pension/NQDC ($)(3)	Perquisites/ Benefits($)	Tax Reimbursement ($)	Other ($)	Total ($)
K. B. Marsh(4)	$ 0	$3,058,911	$ 0	$ 0	$ 0	$ 0	$3,058,911
J. E. Addison	$5,297,314	$3,599,065	$ 821,648	$ 0	$ 0	$ 0	$9,718,027
S. A. Byrne(4)	$ 0	$1,111,410	$ 0	$ 0	$ 0	$ 0	$1,111,410
W. K. Kissam	$2,369,140	$1,343,380	$ 334,939	$ 0	$ 0	$ 0	$4,047,459
J. B. Archie	$1,830,563	$1,152,695	$ 218,108	$ 0	$ 0	$ 0	$3,201,366
I. N. Griffin	$2,000,089	$ 756,911	$ 253,758	$ 0	$ 0	$ 0	$3,010,758

Other Executive Officers	Cash ($)(1)	Equity($)(2)	Pension/NQDC ($)(3)	Perquisites/ Benefits($)	Tax Reimbursement ($)	Other ($)	Total ($)
Aggregate for other executive officers (five individuals)	$8,556,815	$4,809,643	$ 962,359	$ 0	$ 0	$ 0	$14,328,817

(1) Cash. The amounts listed in this column consist of (a) an amount equal to 2.5 times the sum of base salary and target short-term incentive award, (b) an amount equal to the full target annual incentive opportunity for the year in which the merger occurs, and (c) an amount equal to the projected cost for insurance benefits for three years. All such benefits are "double trigger" and are provided only on a termination without just cause or resignation for good reason during the period within 24 months after a change in control of SCANA. For further details, see the section entitled "*—Interests of SCANA's Directors and Executive Officers in the Merger—Payments under the Supplementary Key Executive Severance Benefits Plan*" beginning on page 76 of this proxy statement/prospectus. Messrs. Marsh and Byrne retired effective January 1, 2018 and are not eligible for any severance as a result of the merger.

Named Executive Officer	Severance	Target Bonus	Amount Related to Benefits	Total
K. B. Marsh	$ 0	$ 0	$ 0	$ 0
J. E. Addison	$4,395,223	$ 832,779	$ 69,312	$5,297,314
S. A. Byrne	$ 0	$ 0	$ 0	$ 0
W. K. Kissam	$1,968,410	$ 310,174	$ 90,556	$2,369,140
J. B. Archie	$1,545,714	$ 219,392	$ 65,457	$1,830,563
I. N. Griffin	$1,668,752	$ 250,313	$ 81,024	$2,000,089

Other Executive Officers	Severance	Target Bonus	Amount Related to Benefits	Total
Aggregate for other executive officers (five individuals)	$7,175,645	$1,011,249	$ 369,921	$8,556,815

(2) Equity. Consists of (a) unvested performance share awards and (b) unvested restricted stock units (each including dividend equivalents) that will become vested at the effective time of the merger and paid out in cash as described above pursuant to the merger agreement. Pursuant to the merger agreement, all such benefits are "single trigger." For Messrs. Marsh and Byrne, only a pro rata portion of the performance shares (relating to the period during which each was employed) is included pursuant to the terms of their award agreements. For further details regarding the treatment of SCANA equity awards in connection with the merger, see the section entitled "*—Interests of SCANA's Directors and Executive Officers in the Merger—Equity Compensation*" beginning on page 75 of this proxy statement/prospectus.

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	Salary	Incentive	Other	Total	New Nuclear Incentive
2016	$2,539,825	$952,754	$121,722	$3,614,301	$18,421
2015	$2,183,112	$843,245	$89,726	$3,116,083	$18,277
2014	$2,276,578	$712,983	$100,934	$3,090,495	$2,319
2013	$1,986,796	$786,767	$86,537	$2,860,100	$8,136
2012	$1,911,651	$563,077	$85,829	$2,560,557	$15,959
2011	$2,228,517	$735,229	$89,778	$3,053,524	$7,536
2010	$1,608,413	$669,155	$46,776	$2,324,344	$0
2009	$1,520,411	$342,624	$46,776	$1,909,811	$0
2008	$1,487,116	$431,067	$38,764	$1,956,947	$0
2007	$1,410,885	$411,269	$37,720	$1,859,874	$0
	$19,153,304	**$6,448,170**	**$744,562**	**$26,346,036**	**$70,649**

2016

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$540,929	$330,508	$22,932	$894,369	$10,548
Marc Tye	$312,567	$133,622	$17,296	$463,485	
Jeff Armfield	$370,552	$163,413	$18,168	$552,133	
Pamela Williams	$307,424	$87,616	$16,456	$411,496	
Michael Baxley	$292,136	$85,888	$16,200	$394,224	$3,506
Arnold Singleton	$234,379	$45,938	$11,608	$291,925	
Michael Crosby	$242,638	$70,607	$10,613	$323,858	$4,367
Dominick Maddalone	$239,200	$35,162	$8,449	$282,811	
	$2,539,825	**$952,754**	**$121,722**	**$3,614,301**	**$18,421**

2015

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$525,174	$331,122	$13,253	$869,549	$13,655
Marc Tye	$289,414	$126,329	$13,657	$429,400	
Jeff Armfield	$356,300	$155,525	$16,456	$528,281	
Pamela Williams	$295,600	$86,020	$14,845	$396,465	
Michael Baxley	$275,600	$80,200	$13,661	$369,461	
Arnold Singleton	$220,924	$0	$9,017	$229,941	
Michael Crosby	$220,100	$64,049	$8,837	$292,986	$4,622
	$2,183,112	**$843,245**	**$89,726**	**$3,116,083**	**$18,277**

2014

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$486,272	$240,705	$15,313	$742,290	
Jeff Armfield	$332,999	$107,226	$16,364	$456,589	
Marc Tye	$258,405	$95,093	$12,474	$365,972	
Pamela Williams	$284,214	$52,296	$13,110	$349,620	
Phil Pierce	$237,813	$76,576	$13,477	$327,866	
Michael Baxley	$262,500	$48,300	$10,032	$320,832	$1,050
Ben Fleming	$202,800	$55,973	$10,963	$269,736	
Michael Crosby	$211,575	$36,814	$9,201	$257,590	$1,269
	$2,276,578	**$712,983**	**$100,934**	**$3,090,495**	**$2,319**

2013

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$450,252	$251,354	$10,924	$712,530	$3,696
Jim Brogdon	$269,871	$112,266	$15,625	$397,762	$2,159
R.M Singletary	$285,137	$118,617	$13,657	$417,411	$2,281
Jeff Armfield	$314,150	$80,894	$12,174	$407,218	
Ben Fleming	$195,000	$39,780	$11,345	$246,125	
Phil Pierce	$230,886	$82,426	$12,573	$325,885	
Marc Tye	$241,500	$101,430	$10,239	$353,169	
	$1,986,796	**$786,767**	**$86,537**	**$2,860,100**	**$8,136**

2012

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$416,898	$157,379	$10,775	$585,052	$10,422
Elaine Peterson	$312,777	$94,459	$13,860	$421,096	
Jim Brogdon	$262,011	$81,747	$12,742	$356,500	
R.M. Singletary	$276,832	$83,603	$10,957	$371,392	$5,537
Terry Blackwell	$219,190	$49,647	$12,295	$281,132	
Phil Pierce	$222,006	$49,618	$13,948	$285,572	
Marc Tye	$201,937	$46,624	$11,252	$259,813	
	$1,911,651	**$563,077**	**$85,829**	**$2,560,557**	**$15,959**

2011

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$416,898	$216,579	$11,814	$645,291	
Bill McCall	$377,151	$137,151	$8,960	$523,262	$6,600
Elaine Peterson	$303,667	$94,653	$14,062	$412,382	
Jim Brogdon	$249,067	$77,780	$12,618	$339,465	$936
R.M Singletary	$261,162	$81,404	$10,806	$353,372	
Terry Blackwell	$212,806	$44,221	$10,567	$267,594	
Phil Pierce	$215,540	$43,496	$11,601	$270,637	
Marc Tye	$192,226	$39,945	$9,350	$241,521	
	$2,228,517	**$735,229**	**$89,778**	**$3,053,524**	**$7,536**

2010

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$416,899	$206,520	$10,296	$633,715	
Bill McCall	$377,151	$157,488	$9,120	$543,759	
Elaine Peterson	$303,667	$115,088	$9,120	$427,875	
Jim Brogdon	$249,534	$93,850	$9,120	$352,504	
R.M. Singletary	$261,162	$96,209	$9,120	$366,491	
	$1,608,413	**$669,155**	**$46,776**	**$2,324,344**	**$0**

2009

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$404,756	$102,629	$10,296	$517,681	
Bill McCall	$366,166	$88,379	$9,120	$463,665	
Elaine Peterson	$268,020	$54,789	$9,120	$331,929	
Jim Brogdon	$242,766	$49,640	$9,120	$301,026	
R.M. Singletary	$239,203	$47,187	$9,120	$295,510	
	$1,520,411	**$342,624**	**$46,776**	**$1,909,811**	**$0**

2008

	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$393,225	$132,912	$7,616	$533,753	
Bill McCall	$360,749	$113,934	$7,839	$482,522	
Elaine Peterson	$261,276	$64,183	$7,839	$333,298	
Jim Brogdon	$238,682	$61,229	$7,631	$307,542	
R.M. Singletary	$233,184	$58,809	$7,839	$299,832	
	$1,487,116	**$431,067**	**$38,764**	**$1,956,947**	**$0**

	2007				
	Salary	Incentive	Other	Total	New Nuclear Incentive
Lonnie Carter	$369,230	$127,746	$7,616	$504,592	
Bill McCall	$346,874	$109,798	$7,839	$464,511	
Elaine Peterson	$245,033	$61,995	$7,839	$314,867	
Jim Brogdon	$229,501	$58,820	$6,587	$294,908	
R.M. Singletary	$220,247	$52,910	$7,839	$280,996	
	$1,410,885	**$411,269**	**$37,720**	**$1,859,874**	$0

Exh. H

Executive Leadership Team

Name	Title	Current Salary	2017 Incentive	Car Allowance	Executive DB Plan DB Group [A]	%	Years	Exec DC Plan 6/30/17 Balance [B]
Lonnie Carter	President & CEO	$540,929	$330,508	$12,540	I	51%	20	$858,572
Marc Tye	Exec VP Comp Markets & Generation	$312,567	$133,622	$11,040	I	25% [C]	15	$113,709
Jeff Armfield	Sr. VP & CFO	$370,552	$163,413	$11,040	I	25% [D]	15	$93,674
Pamela Williams	Sr.VP Corporate Services	$307,424	$87,616	$11,040	II	20%	15	$60,068
Mike Baxley	Sr. VP and General Counsel	$292,136	$85,888	$11,040	II	20%	15	$54,714
Michael Crosby	Sr. VP Nuclear Energy	$242,638	$70,607	$11,040	II	20%	15	$46,805
Arnold Singleton	Sr. VP Power Delivery	$234,379	$45,938	$11,040	II	20%	15	$24,349
Dom Maddalone	Sr. VP Technology Services & CIO	$239,200	$35,162	$11,040	II	20%	15	$14,298

NOTES

[A] See Attached Executive Defined Benefit Plan Summaries - Group I (Older Plan) & Group II (All New Members Since 2007)

[B] See Attached Executive Defined Contribution Plan Summary; Participation is limited to members of the Executive Leadership Team

[C] Increases to 30% with continued employment at 6/30/18; 35% at 6/30/19; 40% at 6/30/20

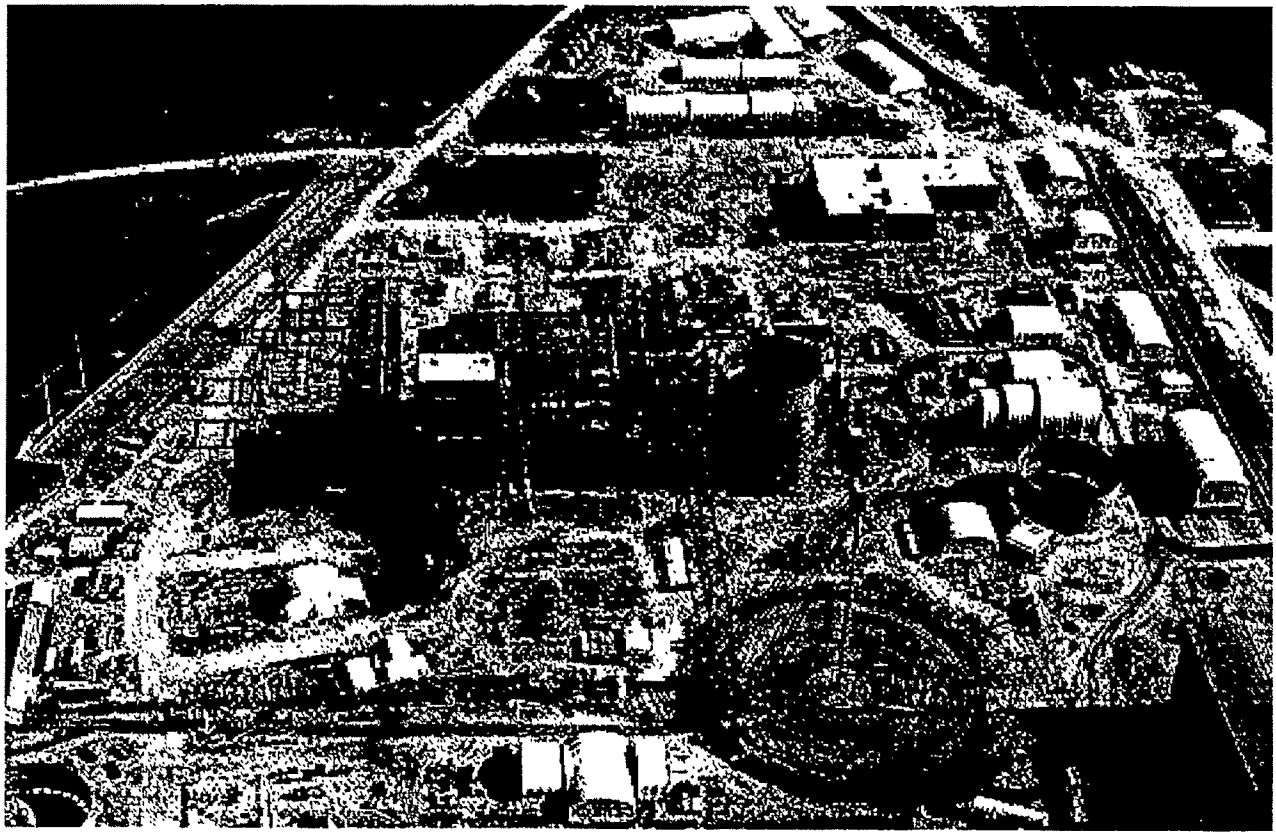
[D] Increases to 30% with continued employment at 12/31/17; 40% at 6/30/18

Note> The chart does not include Life Insurance or Executive Physicals. The total value of these items is less than $5,000 per participating employee.

Exh. I

Santee Cooper execs received big bonuses

By RICK BRUNDRETT thenerve.org
Mar 7, 2018



This Sept. 18, 2017 photo shows the partially built V.C. Summer Nuclear Generating Station near Jenkinsville.

AP

As state-owned utility Santee Cooper was racking up billions in debt ratepayers are expected to shoulder – for the failed V.C. Summer nuclear project, the company's top executives were raking in huge bonuses and salary hikes.

More than $4 billion in bonds that were sold to finance the biggest financial flop in the Berkeley County-based utility's history will have to be paid back with interest over years – to the tune of $200 million to $300 million annually.

But those I.O.U.'s are only part of the company's overall debt load, which company records show stands at more than $15 billion. That tab will be paid back over 40 years, starting last year with payments totaling nearly a half-billion dollars.

And that means Santee Cooper's customers likely will face rate hikes – how much is unknown – in the coming years.

Meanwhile, from 2009 through 2016 as the V.C. Summer project costs were escalating and construction deadlines were missed, the utility paid out a total of $5.6 million in bonuses to 15 executives, company records show.

Of the total bonus pool, $70,648 over the eight-year period was directly tied to the nuclear project, more than half of which was paid to recently retired president and CEO Lonnie Carter.

Carter received the highest total annual bonuses; in 2015 and in 2016 he was paid more than $330,000 in bonuses, which represented more than 60 percent of his salary for those years. During the 2009-16 period in which the V.C. Summer project was active, his yearly salary jumped 34 percent, from $404,756 to $540,929.

Besides bonuses, Santee Cooper's top executives also received, according to a company spokeswoman, annual car allowance and life insurance benefits, which made up their total compensation. The additional perks brought Carter's total 2016 total compensation to $894,369, a hike of about $377,000 from his 2009 compensation.

The total compensation of seven other top executives in 2016 ranged from $282,811 to $552,133, with nearly all of them receiving increases from the previous year, records show.

And Carter also received a golden parachute with his retirement last year: In addition to receiving $344,572 for life from the state retirement system, he will be paid up to $455,192 annually for 20 years through a separate executive retirement plan with the company, plus had had $858,577 in a 401(k)-type retirement plan through Santee Cooper, according to media reports.

The Santee Cooper board recently voted to close the two company-backe[illegible] retirement programs to new participants, a company spokeswoman said.

The Nerve in 2011 reported that Santee Cooper top executives, including Carter, received salary and benefit hikes during the Great Recession years and aftermath.

In more recent years, the utility's top executives were getting raises and bonuses even as a now-public internal report authorized by Santee Cooper and its partner in the V.C. Summer project, South Carolina Electric & Gas, detailed serious problems with the project, which was abandoned last July 31.

No bonuses were paid in 2017 to Santee Cooper's top executives, according to the utility's records.

In recent emails to The Nerve, Santee Cooper spokeswoman Mollie Gore said "performance-based pay" given to top executives was "tied to specific corporate and individual goals on reducing costs and improving service and performance," adding that most of the benefits related to "cost of power, customer satisfaction and safety results."

Asked if no bonuses were given last year because the nuclear project was scrapped, Gore replied, "Performance results are audited prior to any benefits awarded, and that audit is ongoing."

Whether any bonuses for top executives are planned for this year will "de
on year-end results and an audit of those results," Gore said.

Rick Brundrett is news editor of The Nerve (thenerve.org), an investigative news website run by the S.C. Policy Council (scpolicycouncil.org). A longer version of this story can be accessed at **https://thenerve.org/santee-cooper-execs-get-big-bonuses-pay-hikes-while-nuclear-debt-mushrooms/**

Condon named to head Santee Cooper board

Gov. Henry McMaster announced former South Carolina Attorney General Charlie Condon as the next chairman of Santee Cooper's Board of Directors.

Condon will serve the unexpired term ending in May that was left vacant when former Chairman Leighton Lord resigned in December 2017. The governor will appoint Condon to a full, seven-year term after the current term expires.

"With his commitment to the rule of law and his proven dedication to serving the people of South Carolina above all else, I'm confident that Mr. Condon's leadership will usher in a new era of accountability at Santee Cooper that South Carolinians deserve," McMaster said.

"I appreciate Gov. McMaster asking me to accept this important challenge," Condon said. "As the future and mission of Santee Cooper is debated, my goal is to provide transparent and accountable leadership of the board, with the interests of ratepayers and customers my number one priority."

Currently a Charleston-area attorney, Condon has a career of public service marked by eight years as attorney general from 1995 to 2003 and over 10 years as solicitor in Charleston and Berkeley counties.

Condon is a 1975 graduate of the University of Notre Dame and earned his juris doctor at the Duke University School of Law.

The governor's appointment will be sent for approval to the Public Utilities Review Committee prior to being sent to the full Senate for confirmation.

Santee Cooper execs received big bonuses CLOSE THIS 0 COMMENTS

Most Popular

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Santee Cooper execs received big bonuses

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Mar 27, 2020

Exh. J

Q Doesn't that mean that SCE&G borrowed 250 million dollars in the first quarter of 2018?
A The proceeds at issuance of debt, I believe that relates to withdrawing 100 million dollars from our credit lines from our banks. And then the money pool borrowing, those are funds that we use at the utility company to fund each sub.
Q And so, you don't fund all your capital expenditures or other expenditures through cash flow from operations, do you?
A We do not.
Q And if I can get you, if you don't mind, to move on to page 81 of 155; you see that it's actually part of the management discussion I believe? There are notes to the financial statements? It's talking about affiliated transactions --
A Yes.
Q -- at the top? Excuse me. If you'll look at the paragraph just above the bottom chart where it starts: SCE&G provided ...
A Yes.
Q I'm going to read it, and you just tell me if that's true and accurate. SCE&G provided 110.7 million dollars to a Rabbi Trust consolidated with SCANA in connection with the potential change and control arising from the merger agreement.
A That's correct.

Q And if you don't mind, turn to page 98 of 155. That is going to be page 56 of the actual report. But in the last full paragraph under other liquidity requirements and restrictions --

A Yes.

Q -- do you see the sentence -- it's a long one. It's the penultimate sentence that starts: In January 2018?

A Yes.

Q And it also says: Approximately 110 million was placed in a Rabbi Trust designated as irrevocable subject to change of control to fund payments pursuant to this and certain other deferred compensation, incentive, and retirement plans which might arise in connection with a change of control and/or termination of employment or service if and when such payments become due. Did I read that correctly?

A You did.

Q And is that to secure the payments of key senior leadership after a change of control if you were to lose your position?

A It's not just for senior leadership. It's for a multitude of leaders in the company.

Q How many?

A I don't have a specific number. But there are managers and directors in the plan as well.

Q And one more before we move to a different document and

come back to this issue. Page 100 of 155 at the bottom, it's just the next page you've got to flip to to get to it. The last three sentences of that paragraph in the middle, it's the third full paragraph down, it starts with: Cash provided. If you'd go to the second sentence: The company's decision in 2017?

A Yes.

Q Can I get you to read those next three sentences and just verify that those are true and accurate?

A The company's decision in 2017 to stop construction of Units 2 and 3.

Q Just read it to yourself. I'll ask you a question.

A Oh. Perfect. That's much better. Yes. It's true.

Q And so, doesn't this mean that abandonment is going to provide SCE&G with both a tax refund and a tax deduction which will increase the cash flows?

A That's correct.

Q And significantly increase the cash flows?

A We received in July of this year about 200 million dollars from a refund, from these tax refunds that you're talking about.

Q And that's just the beginning, isn't it?

A There will be more deductions that we take over time. So we'll pay less in taxes over time.

Q More than a billion dollars up front, right?

A In total for the project, yes.
Q I want to ask you to turn, if you don't mind, to Plaintiff's Exhibit 1. It is a Schedule 14 which contains in it the proxy statement for the merger?
A Yes.
Q I'm going to ask you, if you don't mind, it's again different numbering. But if you look at the bottom left corner, page 98 of 254, which gives us -- that's page 80 of the proxy statement, the merger-related compensation?
A Yes.
Q And there it details, you know, at least the top six senior executives of SCANA and what their merger-related compensation would be. Isn't that right?
A That's correct.
Q And Mr. Addison is going to get almost 10 million dollars. And these are the numbers, right, that are protected by the Rabbi Trust money, right? This compensation is what is secured by the irrevocable contribution to the Rabbi Trust, right?
A That is correct. Our change of control policy if the merger is completed and you lose your job. So those people who lost their jobs through the merger would be recipients of that.
Q And this is provided as incentive to the senior executives to complete the deal, complete the merger?

Exh. 2

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	CASE NO. 2019-CP-23-06675 **Affidavit of** **John R. Alphin**

John R. Alphin, being duly sworn, deposed and states:

1. In 2005, I was admitted to the South Carolina Bar and since that time I have practiced at the Strom Law Firm, LLC. My practice focuses primarily on complex litigation, class actions, mass torts, alcohol beverage licensing, and criminal and civil tax litigation. By way of background, I have a Bachelor's of Science in Business Administration and Accounting from the University of South Carolina, as well as a law degree from the University of South Carolina School of Law. I also received an LLM in taxation from the University of Florida. I am admitted to practice in the district court for the District of South Carolina, the United States Court of Claims, the United States Tax Court, and the Fourth Circuit Court of Appeals.
2. Because of my extensive background in accounting and tax, I have been intricately involved in assessment of the financial portion of the case, as well as the trial strategy. Specifically, I led the development of Plaintiffs' damages model, evaluated the economics of various settlement proposals, computed the present value of periodic payments, and calculated the interest to be paid on certain settlement payments.
3. Based on information supplied in discovery and other sources, including publicly available information, I have calculated that the amount of advance financing costs charged by South Carolina Public Service Authority ("Santee Cooper") to its customers (both direct and indirect) for the V.C. Summer nuclear project is as follows:

Year	Total Santee Direct + Central
2007	$137,055.00
2008	$4,589,598.26
2009	$29,098,687.42
2010	$45,830,540.72
2011	$30,105,940.91
2012	$38,269,731.33
2013	$44,551,203.85
2014	$85,760,244.81
2015	$112,324,621.82
2016	$75,313,490.65
2017	$102,923,400.88
2018	$79,544,324.41
2019	$69,241,969.11
	$717,690,809.17

4. Using this data, I have computed that the advance financing costs charged by Santee Cooper from inception of the V.C. Summer project through abandonment on July 31, 2017, is approximately $540 million. Moreover, I have computed that the amount of advance financing costs charged by Santee Cooper from and after the April 5, 2012 "full notice to proceed" decision by Santee Cooper until the date of settlement (February 20, 2020), is also approximately $540 million.

5. The settlement agreement provides that South Carolina Electric & Gas ("SCE&G") will pay an interest rate of 1.75% on its $320 million settlement payment from a date which was seven (7) days after preliminary approval of the settlement (March 24, 2020) until the date the funds are released to the class (seven (7) days after the Final Approval Order). Settlement Agr. § IV(A). If the Court enters the final approval order on the date of the final approval hearing (July 20, 2020), SCE&G's latest payment date would be August 26, 2020. For these reasons, I have used

August 26, 2020 as the termination date of SCE&G's interest obligation. Should the Court delay entering the final approval order, the interest rate calculation would be adjusted accordingly. Based on the August 26, 2020 SCE&G transfer date, the amount of interest that SCE&G will pay in addition to the $320 million principal is $2,420,158.45.

6. I have also calculated the present cash value of the Santee Cooper stream of payments. Pursuant to the settlement agreement, Santee Cooper will pay $200 million to the Class in three annual installments with $65 million payable in the third quarter of 2020, and additional $65 million payable in the third quarter of 2021, and the final $70 million payable in the third quarter of 2022. Settlement Agr. § IV(A). Using the same interest rate set forth in the settlement agreement for SCE&G's payments (1.75%), in calculating the present cash value of Santee Cooper's payments, I have used the effective date of the settlement which, if final approval is given on July 20, 2020, will be August 19, 2020 (*i.e.* 30 days after entry of the approval order). Settlement Agr. § VII(A.4). Using that interest rate and the date assumption stated herein, the present cash value of the Santee Cooper payments as of the effective date is $196,494,907.91.

7. I have also been involved in determining the value of Santee Cooper's rate freeze through the end of 2024 which is enforceable by Court order pursuant to the settlement agreement. Settlement Agr. § IV(B). In making this determination, I have relied, in part, upon information provided by Santee Cooper and calculations and assessments done by Central Electric Power Cooperative, Inc. based on their experience and expertise in evaluating the effect of Santee Cooper's rates on retail

customers, including the Affidavit of John Brantley attached as Exhibit 1 and an settlement approval date of July 20, 2020. Based on this work, it is our best approximation that Santee Cooper's rate freeze through the end of 2024 will save Santee Cooper customers approximately $510,000,000.00 in future costs that the customers would otherwise be required to pay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 13, 2020

John R. Alphin

SWORN to before me this 13
day of May, 2020

JLF
Notary Public for South Carolina
My commission expires: 5/1/2025

EXHIBIT

1

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Jessica S. Cook, *et al.*, Plaintiffs, vs. South Carolina Public Service Authority (also known as Santee Cooper), *et al.*, Defendants.	)	Civil Action No. 2019-CP-23-06675 AFFIDAVIT OF JOHN B. BRANTLEY, SENIOR VICE PRESIDENT AND CHIEF FINANCIAL OFFICER OF CENTRAL ELECTRIC POWER COOPERATIVE, INC.

The undersigned, John B. Brantley, having been duly sworn, deposes and says as follows:

1. I am a resident of the State of South Carolina, over the age of 21 and competent to make this Affidavit.

2. I am the Senior Vice President and Chief Financial Officer of Central Electric Power Cooperative, Inc. ("Central"), and my work address is 20 Cooperative Way, Columbia, South Carolina 29210. In my position I am familiar with the contract between Central and the South Carolina Public Service Authority ("Santee Cooper") and the class action brought by Jessica Cook and others against Santee Cooper, Central and others ("Cook case").

3. I have been asked to provide an assessment of the monetary value of the rate freeze provisions of the settlement agreement in the Cook case. As the Chief Financial Officer of Central I have reviewed and am familiar with the settlement agreement and the provisions of the settlement agreement that require Santee Cooper to charge certain rates during the period from the approval of the settlement agreement through the end of 2024 (the "Rate Freeze Period"). The rates that Santee Cooper has agreed to charge during the Rate Freeze Period are the rates that Santee Cooper estimated that it would be able to achieve under the plan that it submitted to the South Carolina Department of Administration as a part of the process adopted by the General Assembly in Act 95 of 2019.

4. Central participated in the Act 95 process conducted by the Department of Administration. Central had the assistance of outside consultants as well as its own engineers and utility finance experts in assessing the plans submitted to the Department of Administration. As part of this process the Central team prepared an assessment of the

savings that would be produced by the implementation of the Santee Cooper plan, as submitted.

5. As part of its assessment of the Santee Cooper plan Central estimated the savings that would result from implementation of that plan as compared to revenue requirement projections provided by Santee Cooper to the General Assembly in 2018. Central estimated the savings associated with the Santee Cooper plan, as submitted, over five years at $584 million in nominal dollars, not including the settlement refunds. I understand that the beginning date of the Rate Freeze Period is uncertain, and that the length of the Rate Freeze Period will be less than five years. Accordingly, the savings associated with the rate freeze will be somewhat less than the five-year estimate of $584 million.

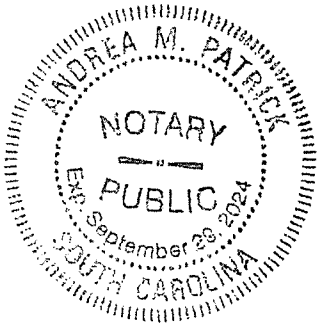
FURTHER AFFIANT SAYETH NOT.

John B. Brantley

Sworn and subscribed to before me
this the 11 day of May 2020.

Andrea Patrick

Print Name of Notary Andrea Patrick
Notary Public for the State of South Carolina
My Commission Expires: Sept 29, 2024



Exh. 3

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NO. 2019-CP-23-06675
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	**Affidavit of** **Jessica L. Fickling**

I, Jessica L. Fickling, being duly sworn, hereby avers as follows:

1. I am an attorney at the Strom Law Firm, LLC where I have practiced since 2012. I have a law degree from the University of South Carolina School of Law, and have been a member of the South Carolina Bar since 2011. My practice focuses primarily on complex litigation, class actions, and related matters.

2. In connection with the prosecution of this action, I have been heavily involved in various aspects of discovery, including document production, depositions, third-party practice, and privilege log challenges. I am personally familiar with the discovery activities in this case and the extensive interaction among counsel on our team to coordinate document review, deposition preparation, and taking/defending various depositions.

3. The discovery in this matter was ongoing and intense. In all, Santee Cooper produced more than 40 individual tranches of documents, while SCE&G produced 26. The defendants collectively produced over 2.5 million pages of documents. Class counsel also secured documents from other parties and non-parties, including co-cops, and project auditors, and consultants.

4. I worked with other counsel on our team and defense counsel in the scheduling and coordinating of depositions. By the time of settlement, the parties had conducted 32 depositions, and 43 depositions remained, many of which were scheduled to go forward in tandem as a result of the fast-paced schedule. At various times, approximately 36 lawyers appeared in depositions on behalf of the Defendants, and witnesses were often represented by both personal and corporate counsel.

5. Throughout the litigation, Defendants continued rolling production, often producing documents the night before critical depositions. As an example, on the evening before the deposition of Santee Cooper's onsite project representative, Michael Crosby, Santee Cooper made a supplemental production of several thousand pages of documents.

6. Defendants also produced responsive documents long after significant depositions had ended. Plaintiffs repeatedly sought clarification on the status of document production and the outstanding volume of production, which was still pending even as of the date of settlement with less than sixty (60) days remaining before trial.

7. During the litigation, Defendants collectively produced more than 12 non-consecutive privilege logs, invoking broad privilege protection over a wide swath of documents. In response, Class Counsel, myself included, spent significant time reviewing the Defendants' privilege logs, conferring with defense counsel on various privilege challenges, attempting to reach consensus on privilege issues, and ultimately, making motions to compel and arguing those motions before the Court and/or Special Master. As discovery progressed, and Plaintiffs sought *in camera* review of every remaining document on the SCANA Defendants' privilege log, on the basis of the Defendants' continued withholding of documents without sufficient descriptions, the SCANA Defendants' voluntarily de-designated or narrowed redactions over 14,000 additional documents.

8. This voluntary re-production of a massive number of documents from Defendants' privilege log was hampered by Defendants' renumbering of the documents produced. This shuffling compounded the difficulty of cross-referencing what had been produced against what still required review.

9. However, our continued review led to important discoveries that demonstrated the depth of Defendants' knowledge regarding the challenges facing the Project. For example, through an October 2019 challenge, Class Counsel came into possession of more than 100 previously withheld or redacted documents concerning third-party project consultant PriceWaterhouse Coopers, who the SCANA Defendants retained in or around 2010 to analyze SCE&G's project governance structure.

10. In addition to my involvement in discovery, I was also involved in many of the motions filed in this case. In all, the parties filed 71 motions on a variety of legal issues.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 4/29/20

Jessica L. Fickling

SWORN to before me this 29 day of Apr. 1, 2020

Notary Public for South Carolina

My commission expires: 12/03/2024

Exh. 4

State of South Carolina)) County of Greenville)	In the Court of Common Pleas Thirteenth Judicial Circuit 2019-CP-23-06675	
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, vs. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority;		Transcript of Record

Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation; SCANA Services, Inc.,
Defendants.

March 17, 2020
Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

A P P E A R A N C E S:

John R. Alphin, Esquire
Attorney for Plaintiffs

A.G. Solomons, III, Esquire
Attorney for Plaintiffs

Edward J. Westbrook, Esquire
Attorney for Plaintiffs

James L. Ward, Jr., Esquire
Attorney for Plaintiffs

Vincent A. Sheheen, Esquire
Attorney for Plaintiffs

Steven J. Pugh, Esquire
Caleb M. Riser, Esquire
Attorneys for Defendants SCANA/South Carolina Electric & Gas

Jonathan R. Chally, Esquire
Attorney for Dominion

J. Michael Baxley, Esquire
Senior Vice President and General Counsel for Santee Cooper

Allen Mattison Bogan, Esquire
Benjamin Rush Smith, III, Esquire
Attorneys for Defendants SCPSA/Santee Cooper

Michael J. Anzelmo, Esquire
Attorney for SCANA

Frank R. Ellerbe, III, Esquire
Attorney for Central Electric Power Cooperative

Maryann S. Nevers, CVR-M-CM, RVR
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter

I N D E X

E X H I B I T S

NO.	DESCRIPTION	I.D.	EVID.

No exhibits were marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding commenced at 9:58 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen. This is a hearing in the matter of *Jessica Cook and many others, plaintiffs, against the South Carolina Public Service Authority, also known as Santee Cooper, and other defendants*. It's a case now pending in the Thirteenth Judicial Circuit, County of Greenville, venue having been transferred from Hampton County; bears the number 2019-CP-23-06675.

This is a hearing to discuss plaintiffs' motion for preliminary approval of a class-action settlement agreement in this matter. Why, before we begin, let me note for the record that I have given permission for Mr. Avery Wilkerson of *The Post and Courier* and Mr. John Monk of *The State* to be present here. This is a public proceeding. And although access to our courtroom is somewhat restricted at this time because of the coronavirus guidelines, this is a public proceeding and, therefore, quite properly, members of the press are here.

Mr. Monk, I don't have your order here. But if you'll get it to me after these proceedings, I'll sign it. And it's certainly perfectly all right for you all to use the kind of recording devices you used in the previous hearings as we proceed here.

I -- as I look about the room, I note that all counsel are present and other advisors to counsel in connection with this matter. And I -- I might say at the outset -- and I'll put more on the record about this before we conclude this matter -- this is a -- quite a remarkable accomplishment in one of the most complex pieces of litigation in my 50-plus years of practice I have ever seen filed and pursued -- and pursued in Circuit Court in the State of South Carolina.

And I would venture to say that the proposed settlement in this case is, by far, the largest settlement or potential verdict of its type in the state. It involved the extreme diligence of some of the most capable lawyers in South Carolina and in the nation.

It's been a privilege for me to work with you, as you, in a very adversarial way, pursued the various positions that you take on behalf of your clients, but always with civility. I very much appreciate that. We've had some very intense meetings, including not only discovery depositions and the usual pretrial things, which are much complicated by the nature of this litigation, but also, we've had two lengthy and intense judge-led mediations of this matter.

And no quarter was given or -- or expected as we tried to navigate the issues in this case and examine them

through the lens of what is the right thing to do for the ratepayers who brought this lawsuit.

I want to particularly thank some of the worker bees who really put the paperwork together at the last -- and certainly, in the plaintiffs' camp, Mr. Alphin and Mr. Solomons; in Dominion's camp, Mr. Chally from the Atlanta bar.

And, Mr. Chally, you did not have to be here today. But we appreciate your coming. I know you have worked so hard on this matter that you want to see your work come to fruition.

And Mr. Michael Anzelmo and Mr. Steve Pugh of the South Carolina bar; on the part of Central, Mr. Ellerbe, you and Mr. Bell and Mr. Tiencken and the -- your folks have just been so professional and so good to work with. And I thank you for that.

And on the part of the plaintiffs, the peacemaker always was Mr. Sheheen. And ---

MR. SHEHEEN: Thank you.

THE COURT: --- we very much appreciate that. But I think that the technician's hat needs to go to Jay Ward, who had so much to do with the heavily technical work of putting together these materials for us to discuss today.

Santee -- Mr. Smith, Mr. Bogan, I thank you from the bottom of my heart for what you've done to try to move the

discussion in a way that makes sense for Santee Cooper and then do the hard work that it takes to translate that to a document we can examine today.

And there are many in -- others in this room who either dealt with the insurance of -- you did, Mr. Duffy and Mr. Lay.

And representatives of the leadership of Dominion, Mr. Stuckey, we're glad to see you in the courtroom today.

So I thank all of you for what you've done. Mr. Baxley ---

MR. BAXLEY: Thank you.

THE COURT: --- of Santee Cooper, I thank all of you for what you've done to try to get us to this point.

So I say that preliminarily. And I'll now turn the matter over to the plaintiffs, who are the moving party. Mr. Solomons?

MR. SOLOMONS: Mr. Westbrook will be speaking for us, Your Honor.

THE COURT: Mr. Westbrook?

MR. WESTBROOK: Good morning, Your Honor. Edward ---

THE COURT: The -- this is ---

MR. WESTBROOK: --- Westbrook ---

THE COURT: --- the -- this is the senior supervisor of the rest of these children.

MR. SHEHEEN: We pulled out the war -- warhorse when

you need him.

THE COURT: There you go.

MR. WESTBROOK: When Mr. Speights isn't here, I'm the senior supervisor.

Good morning, Your Honor. Edward ---

THE COURT: Good morning.

MR. WESTBROOK: --- Westbrook for the plaintiff class.

THE COURT: And -- all right. Mr. Westbrook is following the format that you all are very well aware of. You -- many of you will address the Court. At -- when you do so, even if you do so several times, please always say your name and who you represent. Thank you, Mr. Westbrook, on behalf of the plaintiff.

MR. WESTBROOK: May it please the Court. Your Honor, happy St. Patrick's Day to everyone. It's ---

THE COURT: Yes, sir.

MR. WESTBROOK: --- a great day for the Irish.

THE COURT: It is. And for my husband. It's his 80th birthday ---

MR. SHEHEEN: Wow.

THE COURT: --- today.

MR. WESTBROOK: My McLaughlin relatives and it's a great day for Santee Cooper customers we believe, Your Honor. We're here today on plaintiffs' motion for preliminary approval of class-action settlement, which, as

Your Honor has said, will settle one of the most complex pieces of litigation in South Carolina history and one of the most complex pieces of litigation in my 37-year career in class-actions around the country. Your Honor, the claims, the cross-claims, the third-party claims, the proposed arbitration claims in this case were astounding. If the settlement is finally approved, those claims will all be resolved.

Your Honor, when the settlement was announced and the newspapers carried stories about preliminary approval, I got inquiries about, "What does this mean, preliminary approval? Is the case settled, or it's not settled?" And "What -- where are you in this case?"

And it reminded me of something that Winston Churchill said about conflict and conflict resolution. In November 1942, after the British had driven Rommel and the German Army out of North Africa, Churchill came to give a speech to the Lord Mayor's council. And he talked about the stages of conflict resolution and where the recent developments put them in that stage.

And he said, to the assembled audience, "Now, this is not the end. This is not even the beginning of the end. But it is perhaps the end of the beginning."

And, Your Honor, I think that fits this case. We're not at the end of this litigation. That will come on that

glorious day when we can give rebates to the customers.

We're not yet at the beginning of the end. That will come when we come back before Your Honor for final approval of the settlement.

But we are indeed at the end of the beginning. We have ceased active combat with the defendants. And we're now joining with them, walking, if not arm in arm in these days of coronavirus, but at least at a respectable social distance, walking together to get to the final resolution of this case.

And the question for today is not -- well, the ultimate question of whether the settlement is fair, reasonable, and adequate. But to use a baseball metaphor, are we in the ballpark of a reasonable settlement? Not whether we've hit a home run, but are we in the ballpark?

And courts take a look to see factors such as how was the settlement negotiated; what stage was the settlement negotiated at; who was doing the negotiation; and what's the result. And Your Honor knows from being intimately involved that this case was settled, if not on the eve of trial, as we marched toward an impending trial that Your Honor made clear was going to happen. And that woke everybody up.

It was settled after intense negotiations. Your Honor is intensely familiar with those. You were there after 2

a.m. with the folks in this room to get that resolved. It was settled in good faith by lawyers of the highest caliber on both sides, as Your Honor has mentioned.

And the results, Your Honor, the $520 million, over half a billion dollars in cash, which will be paid as refunds as part of the common fund to Santee Cooper customers, is one of the largest cash settlements I've been involved in and one of the largest percentage recoveries for a class I've been involved in, in 37 years.

So I think, when the Court has a chance to examine this settlement in great detail at final approval, it will find that indeed the settlement is fair, reasonable, and adequate. Your Honor, for the purposes of today, is it in the ballpark? I think undoubtedly it is.

And Mr. Ward is going to come up in just a minute. And since he is, as you've said, the technician of the details, he's going to discuss the settlement in a bit more detail and some of the procedures that we have to go through to get to that happy day in July when we'll be back before Your Honor.

But as of today, Your Honor, I can say that I have no doubt that we are well on our way. We are here at the end of the beginning. We're ready to move to the beginning of the end. And we're ready to move to the end.

And with that, I'll turn it over to Mr. Ward to

discuss some of the details.

MR. WARD: Good morning, Your Honor. Jay Ward for the plaintiff class.

THE COURT: Mr. Ward.

MR. WARD: As Mr. Westbrook said, you know, he's dealt with sort of the standard -- I'm going to go through some of the factors in a little bit more detail and walk you through some of the terms of the settlement, as parts of it are a little bit dense. So certainly, feel free to stop me if you have any questions.

But we are certainly pleased to be before the Court this morning, recommending preliminary approval of a settlement that will provide $520 million in retrospective relief and valuable prospective relief generally in the form of a four-year rate freeze through the end of 2024. But Mr. Ellerbe, I think, may speak on -- you know, in more detail when I'm -- when I'm finished. But we believe, as Mr. Westbrook said, that this an extraordinary proposed resolution of this unique and very complex litigation.

The proposed settlement class is substantially similar to the class that -- that Your Honor certified for purposes of litigation by order dated November 5 of 2019, with one material change to -- to extend the class period. So the settlement class that we seek your approval of consists of all Santee Cooper residential, commercial, industrial, and

other customers, both direct and indirect, who paid utility bills that included rates calculated in part to pay preconstruction capital in-service, construction interest, and other preoperational costs associated with the V.C. Summer Nuclear Reactor Unit 2 and 3 Project from January 1, 2007, to January 31, 2020. So ---

THE COURT: And that is a -- that date is an extension of the class I certified. And I believe I've already indicated by preliminary order in connection with the notice of these proceedings that we would take up and approve the extension of the class, as you've just recited it. And I think the proposed order does that.

MR. WARD: That's correct, Your Honor. So we extended that date from July the 25th of 2019 to January 31 of 2020 to enable more customers to share in the settlement benefits.

As Mr. Westbrook indicated, the question before the Court today at this stage is whether the proposed settlement is within the range of possible approval so that the Court would direct notice be given to the class of its terms. We certainly believe that at this stage, the -- the settlement certainly meets that standard. And -- and I'm happy to address that standard in more detail.

But suffice it to say that the factors that Court need to consider in determining whether or not the settlement is

adequate at this stage include the fairness of the terms and the adequacy of the proposed relief.

With regard to the fairness, the Court should consider, the cases tell us, the posture of the case at the time of the settlement, the extent of the discovery, the circumstances surrounding the settlement negotiations, and the experience of counsel. As Mr. Westbrook indicated -- and this Court is -- is certainly keenly aware, given the numerous times that we have appeared before you on very complicated issues of law, along with class certification, discovery motions, and from your review of the record prior to the -- the transfer of this case to you, this case has been vigorously litigated, both in -- in this Court, in the South Carolina Supreme Court, in the South Carolina Federal District Court, and in the Fourth Circuit Court of Appeals since the construction stopped on the V.C. Summer project at the end of July in 2017.

At the time of settlement, the parties have taken over 40 depositions; have exchanged or reviewed millions of pages of documents; were preparing, in fact, in expert witnesses and other evidence for submission at the trial that Your Honor had set for April the 20th of 2020. And I can confidently say, on behalf of class counsel, that through the efforts to date, that we are confident that we have developed a deep-enough understanding of the -- of the

legal and factual issues in this case, the strengths and weaknesses of the case, and the value of the case that we can recommend preliminary approval of the settlement.

Your Honor is also certainly intimately familiar with the settlement negotiations. We had an arm's length negotiation that were mediated by Your Honor in October of 2019. The settlement negotiations broke down because the parties have wildly divergent views on the value of the case. And we went through a few procedural bumps with the removal to federal court and a remand.

And so when we got back together, Your Honor moved the trial date from what had been scheduled for February till April; offered its services to reconvene a mediation; and -- and the parties took you up on -- on that offer. And so we did, in fact, reconvene and -- and conducted a -- a mediation on February 18 and 19. And as you recall, on the second day of a very, very long marathon session -- I think we were probably into our 16th hour -- we were able to -- to reach an agreement that we believe supports preliminary approval and issue -- again, issuance of notice.

So given Your Honor's involvement and -- and -- and understanding of the settlement negotiations, there is certainly no hint of collusion with regard to those negotiations. And -- and I'm not going to spend much time speaking about the experience of counsel. We certainly

have lawyers involved in this case, as you've noted already this morning, on -- on both the plaintiffs' and the defense side, that are from the premier local and regional and national firms and -- and -- and a wealth of class-action experience. And -- and I think that we are certainly -- have enough experience to stand before the Court and -- and recommend the settlement for approval.

So let's talk about the adequacy of the settlement. So the adequacy factors for the Court to consider include the strength of the plaintiffs' case relative to the difficulties of proof and the strength of defenses; the duration and expense associated with additional litigation; and the solvency of the defendants; and the probability of recovery in continued litigation.

So as the Court is aware, plaintiffs' claims are subject to numerous defenses that would likely be raised on summary judgment and at trial and, inevitably, on appeal. So if this proposed settlement is not approved, we think that the case will require potentially additional years of litigation and significant risk and expense. There is also risk associated with the solvency of the defendants in the face of ongoing litigation. The precarious financial condition of Santee Cooper has been -- has been well-publicized. And while SCE&G seems to be on more solid footing after its acquisition by Dominion, it is, in fact,

still a -- a separate corporate entity. And, therefore, even if plaintiffs were to receive a judgment for the entire amount of the relief encompassed by the complaint, there is certainly a risk that -- that would still exist as to collectibility.

But we believe that the relief that is afforded by the proposed settlement comes as near as practicable to fully compensating the class members for the alleged damages set forth in the complaint, which, frankly, is -- is -- is nearly unheard of in -- in class litigation -- certainly, class litigation of this -- of this magnitude. The amount of relief that would be afforded to the class members without the risk and the costs and the uncertainties of further litigation, it is -- is astounding.

The common-benefit fund of $520 million, just to put this in context, is over 95 percent of the 540 million that the class paid from the inception of the project through the date that construction was stopped. As your Court -- as -- as Your Honor will recall, one of the dates that -- that the plaintiffs had focus on is April 2012, which was the date of full notice to proceed, where we believe that there was sufficient evidence available to the defendants that -- that that -- that the construction should've been stopped at that point. And if you look at the classwide relief and compare it to the amount that the class paid

between that date and the end of -- of 2019, the -- the two numbers essentially match up. So we believe this is a -- a tremendous recovery with regard to the -- the retrospective relief.

And in addition to that, the settlement provides for court enforcement of Santee Cooper's agreement to -- for a rate freeze through 2024 at rates consistent with those projected in Santee Cooper's reform plan. That will effectively prevent any rate increases attributable to the project during the rate-freeze period. There is a lot more detail associated with that rate freeze that, again, I'm going to defer to Mr. Ellerbe to -- to explain to Your -- to the Court if you have any questions.

But given the complexity of the legal issues, the -- presented, the likelihood of prolonged litigation, as well as the uncertainties of the eventual successes of the litigation and the financial viability of the defendants, we believe that the -- the proposed settlement is within the range of possible approval to support the request for preliminary approval.

Now, with regard to the settlement agreement, I sent you a -- a -- sort of an outline of -- of -- you -- you have the preliminary-approval motion, attached to which you have the settlement agreement, attached to which you have a distribution plan and a notice plan. And further attached

to the notice plan, you have a series of notices. So there are quite a lot of documents. I'm not going to go through all of the detailed -- of those. But I do want to briefly address the distribution plan and the notice plan.

So the distribution plan is attached to the settlement agreement as Exhibit A. And essentially, what will take place is that SCE&G will transfer to the common-benefit fund a number of shares of Dominion Energy stock valued at $320 million.

The settlement agreement sets forth exactly how that will happen. Over five days preceding the transfer, we will look at the average closing price on those days to -- to calculate the number of shares to be transferred. Those shares will be transferred and sold. The cash will be deposited into the qualified settlement fund for the benefit of the class.

The most important aspect of that piece of the settlement is that -- is that SCE&G will backstop the value of that stock. And to say that another way, in the event that the stock does not sell for $320 million, Dominion will provide additional stock that will then be sold. So at the end of the day, the contribution to the common-benefit fund by the Dominion defendants will -- will not be below $320 million. So -- so that's -- that's an important protection that has been built in to the settlement

agreement.

Now, with regard to Santee Cooper, Santee Cooper will pay $200 million in three annual installments, beginning this year, payable in the third quarter. And those installments will be $65 million, $65 million next year, $70 million the year after. And so what will happen is the common-benefit fund will be distributed in two distributions among the class members proportionately in relation to the estimated amounts collected from those class members related to Santee Cooper's involvement in the V.C. Summer project.

The additional distribution will be made this year. And it will consist of the $320 from the SCE&G defendants and the first Santee Cooper $65 million payment, less taxes and tax expenses, any fee and expense award and incentive awards allowed by the Court, and notice and administrative costs.

The second distribution would then be made in 2022, which would consist of the second Santee Cooper $65 million payment in 20 -- excuse me -- 21 and the $70 million payment in 2022.

For each distribution, class members who are current customers of Santee Cooper or one of the electric cooperatives and whose distribution is less than $25 will receive that distribution by bill credit. And class

members who are customers of Santee Cooper or an electric cooperative whose distribution is at least equal to $25 will receive the distribution by check. And class members who are former customers will receive their distributions by check.

The notice plan is attached to the settlement agreement as Exhibit B. And as I mentioned, attached to the notice plan are several notices, including the summary notice, the detailed notice, the publication notice.

And so to proceed to the fairness hearing and grant final approval of the settlement, notice must be issued to class members in such a manner as the Court direct. We believe that the notice plan that we put together provides the best means of notice to the class members regarding the settlement and satisfies all of the requirements of due process.

The summary notice, the detailed notice, and the publication notice all provide clear and accurate information as to the nature and principal terms of the settlement: the procedures and deadlines for requesting the exclusion from the settlement or submitting objections; the consequences of taking or foregoing the various options available to the class members; the date, time, and place of the fair -- fairness hearing, as will be set by the Court; the maximum amount of attorneys' fees and costs that

may be sought by class counsel; and the identities and contact information of class counsel, defense counsel, and the Court.

And so what the plan provides for is principally direct notice, along with publication notice and -- and other means of providing information to the class. And I'll run through them quickly.

By April the 1st, Santee Cooper and -- and Central will provide information on all class members who became direct and indirect customers between July 26 of 2019 and January 30 -- 31 of 2020. And as the Court will -- will recall, we had been through the process of putting together the class-notice list for purposes of the litigation notice.

So we -- what -- what I'm describing now is really a process of supplementing the class-notice list. And once we have that information, we will merge the new class-member information into the -- the list that we have for litigation notice to create an updated class-notice list.

Then, by May the 1st, the settlement administrator will e-mail the summary notice to each class member for which we have an e-mail address and mail the summary notice to each class member for which an e-mail address is not available. In the event that either the mailed notice or the e-mailed notice is returned as undeliverable, the

notice plan sets forth additional efforts that will be made to provide notice to those class members.

Also, by May the 1st, publication notice will be published in a weekday edition of the -- of *The State, The Greenville News, The Charleston Post and Courier, The Aiken Standard, The Beaufort Gazette and Bluffon Island Packet* combo, *The Rock Hill Herald,* and *The Myrtle Beach Sun News,* which we think you can look at sort of the circulation of those newspapers really blankets the state. And we will also set up a dedicated website, to which class members will be directed in -- in all forms of notice and on which relevant settlement documents and other information will be posted.

We will also have a dedicated toll-free phone line to which class members will be directed in the -- in the notices and -- and on which they will be able to both obtain and request information. And we will run a series of banner ads, totaling approximately 10,000,000 impressions over a 21-day period, using the Google ad-display network and Facebook, just as a -- an additional effort at providing notice.

And so class members will have two options -- well, three options: do nothing and be a member of the class and -- and accept whatever benefits may come to them. They can ask to be excluded from the class. You'll see attached to

the notice plan a request-for-exclusion form that can be submitted. That deadline will be June the 15th. The other option available to class members would be to stay in the class but object to the settlement or any of its terms. And the deadline for class members to file any objections is July the 1st.

The Court had indicated that it would plan to hold a final fairness hearing on July the 20th here in Richland County. We have included in the draft notices that date. We have not included a time.

So if we are, in fact, going to hold a final fairness hearing on July the 20th, we would ask that the Court, in its order granting the preliminary approval, we've left a blank to -- to fill in that time. And so that time would then be -- would be brought over into the notices before ---

THE COURT: And the ---

MR. WARD: --- entering ---

THE COURT: --- time will be ten o'clock. And you may ---

MR. WARD: Okay.

THE COURT: --- amend the proposed order. We may have other things, based on what all the arguments are that are presented. So nothing is precluded. But let's put the time at ten o'clock ---

MR. WARD: Okay.

THE COURT: --- here in Richland County in -- in the notice materials that you send out.

MR. WARD: I will do that. And lastly ---

THE COURT: And then ---

MR. WARD: --- Your Honor ---

THE COURT: -- and then ---

MR. WARD: I'm sorry.

THE COURT: --- then, by the 10th of July and you have final-approval motion filed, right?

MR. WARD: That's right, Your Honor.

And so in conjunction with the request for preliminary approval, the class counsel and the parties have also requested a stay of all discovery and nonsettlement-related trial proceedings, pending the fairness hearing so that the parties can focus on settlement-related matters. I think the Court has already indicated, maybe by way of order, that -- that the proceedings are stayed, except for settlement-related proceedings. We would ask that that be continued through the fairness hearing.

And now, I will give -- I will certainly answer any questions that the Court has. I'll ask Mr. Ellerbe to -- to speak more specifically to some of the rate-relief issues, if Your Honor would -- would like to hear from him.

So at this point, I'll -- I'll go in whatever

direction you -- you see ---

THE COURT: Let's -- let's go forward and hear from Mr. Ellerbe.

MR. WARD: Okay. Thank you, Your Honor.

MR. ELLERBE: Thank you, Your Honor. Frank Ellerbe, representing Central Electric Power Cooperative. And, Your Honor, I'm going to talk about a couple of provisions of the settlement agreement that relate to sort of continuing obligations that Santee Cooper has agreed to that relate to this settlement.

The first of those is that with respect to the $200 million that Santee Cooper is paying into the common-benefit fund, Santee Cooper have agreed to not recover at a later time those funds from the members of the class. The -- the funds are refunds. They're being refunded to customers that -- that paid project costs during the class period. And to their credit, Santee Cooper has agreed that it will not attempt to then, at a later time, recover those refunded amounts in their rates charged to their customers on an ongoing basis.

THE COURT: Which means ---

MR. ELLERBE: That applies ---

THE COURT: Which -- which means, Mr. Ellerbe, they have agreed to -- not to recover the monies that are paid out in settlement from either the class members and/or the

prospective ratepayers.

MR. ELLERBE: That's right, Your Honor. It ---

THE COURT: So no ---

MR. ELLERBE: --- it is ---

THE COURT: --- amount -- no amounts would be collected from any rate by way of any invasion of or addition to rates.

MR. ELLERBE: Those -- those refunded amounts, that $200 million that's being refunded will not find its way into rates. It will not be recovered in rates going forward. And you make a good point, Your Honor, about the fact that there will be some new customers of Santee Cooper who aren't members of the class.

But the second element of the settlement agreement that I've -- will describe is the rate-freeze agreement. And what Santee Cooper has agreed to, as -- as part of the -- its -- the settlement agreement is that it is going to freeze rates beginning at the time of final approval of the settlement and extending through the end of 2024. And the rate -- rates will be frozen, Your Honor, for -- for Central will be frozen at a -- rates that are set out in Schedule B attached to the settlement agreement for the direct -- excuse me. I'm sorry. The Central is Schedule A; the direct-serve customers, Schedule ---

THE COURT: Schedule ---

MR. ELLERBE: --- B ---

THE COURT: --- B.

MR. ELLERBE: --- attached ---

THE COURT: Right.

MR. ELLERBE: --- at -- so -- and those are the rates that were set out by Santee Cooper in its proposed reform plan. But they're -- they're laid out in detail in Schedules A and B.

Santee Cooper also agreed that, in order to make the rate freeze a -- a real rate freeze and give the -- give its customers and class members a -- the benefit of the rate freeze, that it will not defer costs incurred during that period to a later time and then put those costs into rates at a later time.

With respect to that agreement, that part of the agreement about not deferring costs and then attempting to recover them, we have agreed to a number of exceptions. We believe these are reasonable exceptions. They are appropriate.

They're necessary for Santee Cooper to be able to say: "Yes, we can do the rate freeze. We can meet our requirements."

Things like, Your Honor, a hurricane that can cost tens of millions of dollars in unexpected expenses, Santee Cooper would have to be able to respond to that. We

understand that. It's -- it's -- it is a customary part of a utility business to defer costs like that and then -- and then recover them in rates.

We have a number of other exceptions. I can talk about those with you, if you have specific questions. We believe they are all necessary, appropriate. They were negotiated at -- at arm's length and sometimes contentious discussions.

THE COURT: I ---

MR. ELLERBE: But we ---

THE COURT: --- I am very well aware.

MR. ELLERBE: I know you are. But we had a -- but we had a productive conversation. We never got completely stopped. We got it worked out. We think that the -- that the provisions of the -- the exceptions to the rate freeze are -- are appropriate.

Another part of the settlement agreement is that Central has agreed that it will pass on those -- the rate-freeze costs to its customers. And its customer is the electric cooperatives.

And so the rates that Central -- excuse me. The rates that Santee Cooper charges to Central during the rate-freeze period will be passed on to Central so that the savings can go on to the ultimate customers. And Central has agreed to certify that it has complied with that

provision.

Similarly, Santee Cooper has agreed to give an independent auditor's report, confirming that it has complied with these provisions about the -- no recovery of the refund in rates and the -- no deferral of costs during the rate-freeze period. This Court, as I -- as contemplated by the settlement agreement and our discussions with Your Honor, is this Court would retain jurisdiction over these provisions.

We have provided in the settlement agreement a -- a process by which this Court can retain an independent auditor to assist, if an issue arises. And we hope very much that no issue will arise regarding the -- regarding these forward-looking provisions of the settlement agreement.

Your Honor, that's a summary of the provisions that I wanted to talk about. We think that these -- these things are important additional provisions, in addition to the -- the common-benefit fund and the refunds. We think there will be substantial savings associated with the rate freeze that will be beneficial to class members and Santee Cooper customers, direct and indirect, going forward.

We think those are important reasons that -- that the settlement, as Mr. Ward, Mr. Westbrook said, this settlement, certainly at this preliminary stage, is in the

ballpark. We think it's a -- a favorable settlement. Central supports approval -- preliminary approval of the settlement agreement. Thank you.

THE COURT: Mr. Ellerbe, I have one question. And I think it's one of these things that's in the category of "it goes without saying." But I just want to make sure.

In the settlement agreement, in the discussion of the common-benefit fund, which is Section IV, and within that Item B, capital B, noncash settlement consideration, you're describing the consideration that the plaintiff gets. And so you say (as read): "Santee Cooper will provide a rate freeze for the benefit of the class members consistent with the rates projected in the reform plan."

The rates projected in the reform plan, of course, benefit not just the class members, but all ratepayers for that period of time during which the freeze operates, those four years. Am I right?

MR. ELLERBE: That -- you're exactly right, Your Honor. That ---

THE COURT: I think ---

MR. ELLERBE: --- that's ---

THE COURT: --- that's what this says. But I just wanted to ---

MR. ELLERBE: That's -- that ---

THE COURT: --- make sure.

MR. ELLERBE: As a practical matter, it -- it has to work that way. The rate freeze will -- will be directly beneficial to the existing, ongoing customers of Santee Cooper at the time those rates are paid.

THE COURT: And that is exactly what was described in the reform plan.

MR. ELLERBE: Yeah. That's exactly right, Your Honor.

THE COURT: All right. Thank you, Mr. Ellerbe.

MR. ELLERBE: Thank you.

THE COURT: Santee or Dominion, one or the other?

MR. BOGAN: Your Honor, Matt Bogan, on behalf of Santee Cooper. I have nothing further, beyond our papers we've submitted, Your Honor, to offer.

MR. CHALLY: Your Honor, Jon ---

THE COURT: And ---

MR. CHALLY: --- Chally ---

THE COURT: --- but, well, all right. Let me -- let me -- let me not let you out quite that easy, Mr. Bogan. All right. All right.

Santee has filed -- and thank you for it -- a memorandum in support of the preliminary approval -- the -- the plaintiffs' petition for preliminary approval. So Santee is on the record -- all right -- in a very well done and lengthy memo as supporting -- 52-page -- well, not 52 pages, but in a lengthy memo -- supporting the petition for

preliminary approval. And I take it, your statement is that you have nothing further to add to your submission?

MR. BOGAN: That's right, Your Honor.

THE COURT: Very good.

MR. BOGAN: Thank you.

THE COURT: Understood.

Mr. Chally, on behalf of Dominion?

MR. CHALLY: Yes, Your Honor. Thank you. You have perhaps noted that we did not file a brief in support of the settlement. Let me make clear our position here today.

THE COURT: All right. Why don't you come to the podium.

MR. CHALLY: (Complied.)

THE COURT: And in the normal fashion of all the hearings you've attended -- and they've been many -- say your name and who you represent. And then we'll hear from you.

MR. CHALLY: Thank you. I'm Jon Chally. I represent the Dominion defendants.

Your Honor, we support the settlement, intend to abide by the terms of the settlement agreement that we have executed. We -- we don't take a position on the fairness and adequacy of the settlement to the class members. That's an issue for the plaintiffs -- a -- a burden for the plaintiffs to carry and for you, ultimately, to pass on and

not one that we take a position on. But as I indicated, we fully support the settlement and intend to abide by the agreement we've executed.

THE COURT: Thank you, Mr. Chally.

Any -- anyone else who further wishes to be heard with respect to this matter?

(Whereupon, no counsel responded verbally.)

THE COURT: All right, then. A proposed order has been submitted by the plaintiffs, granting preliminary approval of the class-action settlement and a continuing stay of pretrial proceedings as we navigate through the time line that Mr. Ward discussed in his presentation and which this agreement, with its exhibits and submissions, details in much specificity, along with a detailed submission regarding the documents that will be submitted to the class members of the procedure for opting out, the procedure for filing objections, the time lines that apply to these matters, the procedure for the plaintiffs to file an application for fee, the deadlines for that. All of that is specified in the documents which are attached to the preliminary-approval document.

The preliminary-approval document has now been signed by representatives of each of the parties that has presented here today. So the approval has been signed by plaintiff and by all defendants.

I will briefly hit the highlights of this order, which I intend to sign a clean copy of the document and its submissions can be worked out with my law clerk, Ms. Selert. And I would like to file that this morning so that all the proceedings, with respect to notifying class members, can go in motion.

And I would ask Mr. Ward and Mr. Alphin to work with Mr. Bogan and the other representatives of all the parties in this proceedings to be sure we are filing the correct electronic copy of the order itself and all the attachments to the order.

So the parties have well set forth the detailed activities that were taken by the litigants to this complicated matter, which began in 2019 with the filing of a complaint. Many amended pleadings were filed. Much discovery was taken, including depositions, the exchange of over a million documents, much supervision by the Court, issues that arose with respect to confidentiality, with respect to the breadth of the requests for information, so that by the time we had the first mediation in October of 2019, the -- this litigation was at a mature state, where much was known by both sides.

Then, a removal was had to federal court. And material continued to voluntarily be exchanged even during that period of removal. When the case was returned to this

Court and I signed an order immediately setting a new trial date for April the 20th of this year, discovery and exchange of information was at the height of its maturity. All parties knew a great deal about the issues confronting them as the case would be tried.

That doesn't mean that all discovery issues were resolved. There was still some very, very knotty issues that had not yet been resolved and would have to have been resolved before the case was tried in April, a circumstance which I indicated to the parties I was fully ready to deal with, although it would've been a very intense time for the Court and for all parties concerned, given the breadth of disagreements that still prevailed about documents to be exchanged, information to be exchanged, depositions to be taken, and the like.

There -- the parties engaged a wide array of experts, both to advise the parties in this complex utility litigation and tort litigation, as well as to a full menu of witnesses on all side who would've been presented for actual testimony at trial. And the details pertaining to these witnesses were monitored by the Court in that connection so that when this matter then was presented for hearing -- and the Court indicated that if the parties desired, I would, one more time, attempt to preside over a Court-led mediation -- the parties, after consideration

privately, agreed to that. And we had two very intense days of negotiation before an agreement, which is a big, long document with a lot of technical information in it, but, in the end, is a rather simple settlement and a pretty direct one.

The parties had agreed that given dates that both could recognize as the dates that would be presented in litigation as the dates when the defendants knew or should've known that the V.C. Summer projects were either at failure or in great danger of missing the deadlines for the receipt of federal funds, which were the big, looming deadline that the failure to meet precipitated the final dénouement of this project, the parties agreed that if you took a date which all could say, "This is the date upon which we intend to present to the jury the idea that this is the start of the negligence of defendants," if you take that date till the date that we finally agreed would be the -- the end date for liability purposes, the end of December 2019, the value of the rates paid or the monies paid by the ratepayers for the failed project was $541 million or thereabouts.

The parties in the mediation then attempted to guesstimate how long it would take, if the case were tried and such an award as that were made, how long it would take to navigate all of the appellate processes and other

processes and possible financial instability of those against whom the judgments were rendered until some final projection could be made of money to be paid to the ratepayers. And the most common understanding was that four years would not be out of the ballpark as to how long it might take.

If the case were tried in April and if a verdict were rendered in accord with the -- just the actual value of the ratepayers' payment for the failed project, if you take that $541 million and conceive that it -- in the best of all worlds, that money might be paid four years from now, a -- a -- an assumption not free of doubt, given the financial precariousness involved, the present worth of the right to receive $541 million in four years, discounted by discount rate of around 4 percent, is $521 million, almost exactly the amount of money for which the case is proposed to be settled, in terms of the portion of the settlement that is refunds to the ratepayers.

That is a remarkable achievement by the parties to this case and of great benefit to the ratepayers. I don't know of another class action that's hit a 90 to 95 percent monetary target for the value of what the parties agree is a pretty good estimate of what the actual damages in the case were. And that central achievement makes me feel that a good case for fairness, much -- very adequate to submit

this settlement to the ratepayers, has been made.

But in addition to that -- and no value has been put on this, although I -- my guess is that all parties will probably begin to discuss the value of this phase of the settlement. It's the only other component of it.

But when final approval is sought, and that is the four-year rate freeze. That is a really remarkable achievement for the ratepayers and can have, for many, as much or more value than the significant sums that will be put forward to reimburse ratepayers for what had been paid for the failed project.

So the combination of these two things produces a proposal and a settlement agreement that is presumptively fair and reasonable at this stage without a doubt, in my mind.

The order recites the adequacy of this proposed settlement, as well as the satisfaction of due process under our case law and under the statutory law of the state for the notification of class members and the pursual -- the final resolution of the matter by final hearing.

The -- let it also be understood that in time to have an adequate understanding of the issues for me, as the Court, and for the ratepayers and the general public, a petition will be made for attorneys' fees and costs. Those documents will, of course, be publicly submitted, as

everything else has about this case. And a full and fair hearing will be held on the fairness of the amounts sought.

And I have no preconceived notions about that. That remains to be seen when the matter is submitted. But all will have a full opportunity to weigh in on the amount of those fees.

I can only say this: I don't know of any lawyers on any side of this matter who've worked any harder in the many years I've been a judge than the lawyers who appear in this case.

So I would -- plaintiff and defense counsel, I will be prepared, as soon as I adjourn this hearing, to have you approach the bench and discuss the electronic filing of this order. But I will sign the order as submitted by plaintiff before I leave the courtroom this morning.

Is there anything else to come before the Court at this time?

(Whereupon, no counsel responded verbally.)

THE COURT: I -- I'll just make one more remark by way of my final observations about this matter. One of the other benefits that is not directly recited in the settlement agreement or the petition for approval is this: This is an enormous benefit for the State of South Carolina because there remains much discussion about the going-forward management of Santee Cooper and the electric

cooperatives.

The state and its subdivisions has the full menu of possibilities in front of it as this case is settled. Other proposals for the composition of this case bound the state, bound the hands of various participants in various ways. This settlement is a very direct thing that consists of financial recompense and a rate freeze, and that's it.

And all of the rest of the issues that regard utility management in South Carolina on the broadest of scales, including the management of Santee Cooper, remain before the executive and legislative authorities with no interference by this Court. But what this Court will do is retain jurisdiction of this case, not only for the enforcement of the settlement, but through the rate freeze.

That has the benefit of having the parties able to apply directly to this Court for enforcement of this order, rather than to have to have some lengthy proceeding navigating regulatory authorities of one sort or another. For the enforcement of the terms of this order, if there is any doubt that the order is being followed, any of the parties to this proceeding may apply to this Court, which will retain jurisdiction, and their rights will be evaluated and enforced according to the terms of the agreement.

Mr. Chally, anything further?

MR. CHALLY: Yes, ma'am. I just have one comment. Jon ---

THE COURT: Yes, sir.

MR. CHALLY: --- Chally, representing the defendants. We appreciate your guidance through this process, as you well know, and -- and appreciate the comments that you made here today, indicating that we are moving forward.

I do want to make clear one point. At -- I'm not sure it's technically correct to say that we agreed on the damages number with the plaintiffs. And -- and I believe that -- that the -- the discussions that we had, through the mediation and otherwise, would reflect that we were doing our best to resolve what is ultimately a disputed claim. But it -- I just wanted to make sure the record was clear on that point. But we, like I said, appreciate your comments.

THE COURT: Absolutely. And, you know, let the record show that no concessions were made by defendant as to what the value -- what the conduct of the parties might or might not have been. No concessions about negligence were made by any of the defendants. And that would be wholly improper at this time to construe anything that's been said as indicating any concession.

This is the settlement of a hotly contested claim. I can't think of one more hotly contested than this with very

strong arguments on both sides and much left to be decided before the case were tried as to what the positions of the parties might ultimately be, based on court rulings.

So no concessions were made about liability. No concessions were made about the value of the case. This was truly a negotiation to try to settle the matter. And that is all.

MR. CHALLY: Thank you.

THE COURT: All right, sir.

Anything further?

(Whereupon, no counsel responded verbally.)

THE COURT: All right. Court will be adjourned.

(Whereupon, the proceeding concluded at 10:56 a.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 17th day of March, 2020.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Maryann S. Nevers, CVR-M-CM, RVR
Official Court Reporter

Columbia, South Carolina
March 25, 2020

Exh. 5

COUNTY OF HAMPTON)
)
STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

Anderson Memorial Hospital, on behalf of itself and all those similarly situated,)

Plaintiff,)

v.)

W. R. Grace & Co., et al.)

Defendants.)

Case No. 92-CP-25-279

Order

This matter is before the Court on Class Counsel's Application for reimbursement of expenses and the payment of Attorney's Fees. This matter was heard on December 9, 2008 at the Beaufort County Courthouse. Appearing on behalf of the class were Daniel A. Speights, C. Alan Runyan and Bud Fairey.

This case commenced almost sixteen years ago as a class action in the Hampton County Court of Common Pleas. After litigation in the South Carolina Courts and two federal bankruptcy courts the parties came to a resolution of these cases as to defendants United States Gypsum Co. ("U. S. Gypsum") and Federal-Mogul Corporation ("Mogul" formally known as T&N, p.l.c.). These two settlements were reached in the federal bankruptcy court where they were approved as part of the respective approved plans of reorganization of U. S. Gypsum and Mogul. In approving these settlements, the presiding bankruptcy judge lifted the automatic stay of 11 U.S.C.§362 so that this Court could consider whether to approve these two class settlements under Rule 23, SCRCP, and if so approved, to preside over the administration of the settlements.

Pursuant to this Court's prior Order of August 19, 2008 granting preliminary approval of the proposed settlements with U. S. Gypsum and Mogul, Class Counsel has given notice to the

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proposed class that they are seeking Attorney's Fees and reimbursement of the costs advanced in this litigation. In the Court's Order, Class Counsel was required to provide notice to the Class by direct mail to three-hundred and forty one (341) known class members and by publication in eight South Carolina newspapers of highest circulation to the remaining unknown class members, all of whom are South Carolina residents. The direct mail notice and the publication notice both specifically advised class members that upon final approval of the settlements, Class Counsel would seek reimbursement of approximately one million ($1,000,000.00) in expenses incurred in litigating this case and seek an award of one-third of the gross settlement fund in attorneys fees. Further, this Court's Order required Class Counsel to file its petition for fees and expenses well in advance of the final approval hearing. Both the direct mail and publication notices advised absent class members of these filings and explained to them that they could obtain a copy of Class Counsel's petition from the Hampton County Clerk of Court or Class Counsel. This Court's Order also advised absent class members of their rights to appear and object and advised them of the necessity to file any objections to the fee and expenses petition in writing in advance of the final approval hearing.

According to the affidavits of compliance with the notice provisions of this Court's Order, Class Counsel completed the direct mail notice by August 20, 2008 and began the publication notice on August 22, 2008. The final approval hearing was held on October 1, 2008 at the Moss Judicial Center in York, South Carolina. At that hearing, the Court noted that no written objections had been filed by absent class members and that no class members appeared at the hearing. In the ensuing two months between the final approval hearing and the fee hearing, there have been no objections filed to Class Counsel's request.

This Court is very familiar with this case, having been the assigned judge for this case from 1996 through 2001 when the remaining defendants filed bankruptcy petitions, and again in 2008 when the case was returned from the bankruptcy court. This case has been pending for almost sixteen years in this Court and the bankruptcy courts. It has had a complex procedural history which included its removal to federal court, remand to Hampton County, venue motions, jurisdictional litigation, substantive discovery, class certification and several attempted appeals or petitions to the South Carolina Appellate Courts.

The work required of Class Counsel has included sending or responding to well over 1000 written discovery requests, and attending numerous document productions in multiple cities. Just with respect to the class certification, the parties exchanged three rounds of briefs, multiple discovery motions in two states and conducted a two day evidentiary hearing primarily addressing personal ethics attack against Class Counsel which proved to be wholly unfounded. Indeed, this has been a very difficult case since its inception.

In *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), the Supreme Court recognized that the percentage of the recovery method was the accepted way to analyze fees to be paid from a common fund. The court noted: "[W]hen awarding fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.' These courts consequently base an award of attorneys' fees on a percentage of the common fund created, known as the "percentage of recovery" approach." 376 S.C. at 453, 658 S.E.2d at 330; citing, *Edmonds v. United States*, 658 F.Supp. 1126, 1144 (D.S.C. 1987).

Under South Carolina law, a fee award calls for the "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4)

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contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id.* Consideration of all six factors is necessary but none controls. *Id.*

In support of its fee request, Class Counsel has submitted the affidavit and testimony of an expert witness, Professor John Freeman[1], as well as the presentation of Class Counsel Daniel A. Speights, affidavits and other materials in support of the hours spent on the case and the unreimbursed expenses incurred. The Court must evaluate this evidence against the factors identified in *Jackson*, to determine if the requested fee is reasonable under the circumstances.

(1) The Nature, Extent, and Difficulty of the Case

This case has been tough and hard fought from the outset. As demonstrated by the expert testimony of Professor John Freeman and the submissions of Class Counsel, the amount of documentation generated in the case is enormous. As Professor Freeman's affidavit and testimony reflect, the file on this case would measure well over 900 linear feet from end to end. This represents a significant amount of work on a very difficult case.

Additionally, class actions by their nature increase the complexity of a case significantly. This case is no exception. Because of the stakes involved and the number of defendants, there were numerous novel and difficult legal and factual issues that required the attention of Class Counsel. The issues that confronted the parties and this Court were complex and fraught with conflicting medical, scientific, and technical evidence. Each side could confidently cite legal opinions and precedents that supported its view of the case. During the pendency of this case, this Court was confronted with issues such as a particularly contentious class certification

[1] The Court finds Professor Freeman to be qualified to testify as an expert witness regarding Attorney's Fee applications in class action litigation. See, Rules 702, 703 SCRE.

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proceeding, removal/remand, venue, complex discovery issues, complex jurisdictional challenges and establishing facts and assembling proof dating back decades. Adding to the difficulty of the case was a vehement personal assault on Class Counsel's competence and integrity led by W. R. Grace, a defendant who is a party to this lawsuit but not to this settlement. This attack was resoundingly rejected after careful review by this Court. Millions of dollars were spent by the parties in this case and millions more would have been expended but for the settlements reached with these defendants. *In re: Federal Mogul Global Inc.*, 2007 WL 4180545 (Bkrtcy.D.Del. 2007) p. 36 (finding that Debtors would likely incur litigation costs of $5 million to $10 million litigating the Anderson claims before the bankruptcy court).

(2) The Time Necessarily Devoted to the Case

As Professor Freeman aptly noted in his affidavit, this is perhaps one of the oldest cases still active on South Carolina's civil dockets. Over the sixteen years of the pendency of this case, Class Counsel has expended in excess of 12,000 attorney hours representing the class just against these settling defendants. Professor Freeman averred he was confident there was no padding of time or unnecessary duplication of effort. Moreover, as this Court witnessed firsthand, the expenditure of so many hours by Class Counsel was necessary because of the vehement and substantial defense put on by the settling defendants. As Professor Freeman opined, "[b]y dogged persistence and dedication, class counsel demonstrated the ability to protect class members and secure a substantial award."

(3) The Professional Standing of Counsel

Class Counsel has similarly made a compelling showing that this factor weighs strongly in its favor. As Professor Freeman testified, he has personally worked with Dan Speights, Alan Runyan and Bud Fairey and their firm in various ways over the years. Each of these counsel

have been involved with this litigation since its inception. These Class Counsel have enviable reputations and have been at the forefront for many years in the efforts to vindicate clients' rights in court in complex cases, especially asbestos property damage cases. Indeed, Dan Speights was the first lawyer in America to successfully try an asbestos property damage case, and has personally been at the forefront of this litigation for over twenty-seven years. Based upon his own experience and observation as well has his careful review of this case in particular, Professor Freeman avers that"Plaintiffs have had the benefit of truly outstanding advocacy." This Court agrees.

(4) Contingency of Compensation

Class Counsel have advanced seven hundred and three thousand, seven hundred and thirty-seven and 88/100 ($703,737.88) dollars in costs in this litigation and spent over 12,000 attorney hours just with respect to these two settling defendants, without any guarantee of reimbursement except in the event of a successful recovery on behalf of the class. The money and value of time they put at risk was substantial. As Professor Freeman aptly noted, there are "very few law firms in South Carolina [that] have the ability to front costs running into the millions for years on end as Class Counsel have." This action attests to the commitment of Class Counsel to their clients and strongly weighs in favor of this factor.

(5) Beneficial Results Obtained

The gross benefit achieved by Class Counsel in this case, totals $57 million. This represents one of the largest common fund recoveries in South Carolina history. This result was obtained despite worthy and able opposition by defense lawyers who are known for their

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excellence. Moreover, when compared to the results reached in similar class actions, it is clear that this settlement represents a real and substantial benefit to the class.[2]

(6) Customary Legal Fees for Similar Services

The South Carolina Supreme Court determined in *Global Protection Corp. v. Halbersberg* 332 S.C. 149, 503 S.E.2d 483 (1998), the customary fee in South Carolina for complex cases accepted on a contingent-fee basis ranges from one-third to one-half of the gross recovery. Here, Class Counsel has requested one-third of the settlement fund created. This request is well within the range of fees routinely approved by courts in class actions. *See, Maywalt v. Parker & Parsley Petroluem Co.*, 963 F.Supp. 310, 313 (S.D.N.Y 1997) ("Traditionally, federal courts have awarded fees in the 20% to 50% range in class actions"); *In re: Ikon Office Solutions, Inc. Sec. Litig.*m 194 F.R.D. 166, 194 (E.D.Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent of the settlement fund to be fair and reasonable."); *In re: Smith-Kline Beecham Corp. Sec. Litig.*, 751 F.Supp. 525, 533 (E.D.Pa. 1990) ("Courts have allowed attorney compensation ranging from 19 to 45% of the settlement fund created."). It is on the low end of the range acknowledged by the South Carolina Supreme Court in *Halbersberg*. Moreover, when the effective hourly rate of the requested fee award in this case is compared to the fee recently approved by Judge Blatt in *Central Wesleyan College v. W. R. Grace & Co., et al.*, for the U. S. Gypsum portion of that settlement, it is clear that the effective hourly compensation sought, by

[2] As Class Counsel demonstrated at the final approval hearing for this settlement on October 1, 2008, this settlement with U. S. Gypsum and Mogul represents a greater settlement amount than was obtained in other asbestos property damage class action settlements from the same defendants. Indeed, this case generated 155% of the recovery obtained in *Central Wesleyan v. W. R. Grace & Co., et al.*, 2:87-1860-8 (D.S.C.) (nationwide colleges and universities class), 250% of the settlement obtained in *In re: Asbestos Schools Litigation*, 83-0268 (E.D.Pa.) (national primary and secondary school class) and 1500% of the settlement obtained in *Prince George Center v. United States Gypsum Co.*, No. 5388 (Com. Pls., Philadelphia County, PA) from these same two defendants.

class counsel here, a one-third contingency fee, is significantly less than the fee recently approved by Judge Blatt.

Conclusion

For the reasons stated herein, as well as the full record in this case, the Court finds that the award of attorney's fees and the reimbursement of costs is appropriate and is fully supported by the record. The Court, therefore, enters the following orders:

1. Class Counsel shall be reimbursed for the costs advanced to date in the amount of Seven hundred and three thousand, seven hundred and thirty-seven and 88/100 ($703,737.88) dollars;

2. Class Counsel shall be awarded attorneys fees in the amount of one-third of the total recovery from the settlements with U. S. Gypsum and Mogul for work performed to the date of this Order;

3. Class Counsel is authorized to withdraw from the Settlement Funds held in Trust the amounts stated in this Order for attorney's fees and unreimbursed costs which are approved by this Order; and

4. Nothing in this Order shall prohibit Class Counsel from submitting for consideration by this Court any supplemental requests for reimbursement of any costs advanced after the date of this Order which are incurred with respect to this hearing or the administration of this case and/or the claims of class members.

IT IS SO ORDERED.

The Honorable John C. Hayes, III
Circuit Court Judge

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This 10th day of December, 2008
Beaufort, South Carolina

Exh. 6

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	CASE NO. 2019-CP-23-06675 **AFFIDAVIT OF JOHN FREEMAN IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS FEES AND EXPENSES**

"I don't know of any lawyers . . . who've worked any harder in the many years I've been a judge than the lawyers who appear in this case."

Statement from the Bench by Judge Jean Toal, Cook v. South Carolina Public Service Authority, Greenville, S.C. Cir. Court, 2019-CP-23-06675, March 17, 2020, Transcript of Record (hereinafter "Preliminary Approval Transcript"), March 17, 2020, at 42:7-10.

NATURE OF EXPERT'S ASSIGNMENT

1. I have been asked Class Counsel to express an opinion as to the reasonableness of the fees and expense reimbursements sought by Class Counsel in this case. I hold the opinions set forth herein to a reasonable degree of professional certainty as an expert in the fields of legal ethics and lawyer compensation in class action cases. I reserve the right to amend or supplement my opinions or supporting reasons as additional material becomes available.

QUALIFICATIONS AND FACTUAL BACKGROUND

2. I am the Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus at the University of South Carolina Law School. I am a member of the Ohio, South Carolina, and Washington Bars. I have been admitted to practice before various federal courts, including the United States Supreme Court, the Fourth Circuit Court of Appeals, the Fifth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals and four federal district courts, including the United States District Court for the District of South Carolina. I am a member in good standing of each of the foregoing courts.

3. Following my graduation from the University of Notre Dame Law School in 1970, I worked at the Jones, Day law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's

Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I held visitorships at the University of Texas Law School and Loyola Law School in Chicago. As a law school professor, I specialized in courses dealing with business matters, legal accounting, white collar crime, and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a lawyer and as an expert witness. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar. I taught legal ethics for 35 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have lectured on the standards applicable to legal fees and lawyer conduct many times, and I have written about the topic.

4. My work in the class action area began in the 1970s when, as an attorney, I worked on a design-defect class action involving the Corvair automobile and on Truth and Lending class actions brought against a major credit card company. I have brought and prosecuted complex cases, including class actions. I have also opposed class actions as counsel for defendants. I have tried class actions and handled appeals of same. I have participated in class action settlements many times. I have testified in various class actions as an expert witness as to various issues including, many times, the reasonableness of fees and expenses sought. From 1970 to the present I estimate that I have spent over 12,000 hours in dealing with class actions, either as counsel for the class; as counsel for a class action defendant; or as an expert witness in connection with settlement, ethical, or fee issues. A copy of my resume, which further establishes my credentials, is attached as Exhibit 1.

MATERIAL REVIEWED BY EXPERT

5. In preparing to express my opinion, I have consulted with Class Counsel, and have studied facts and legal issues raised in the case and related cases.[1] I have conducted research by reviewing filings in this and related cases that are available on-line. Specifically, I have taken advantage of access to a wealth of background information illustrating the work done by counsel in the sprawling litigation generated by the demise of the V.C. Summer nuclear project. This information is reflected on various court dockets available online, including particularly motions, actions, or orders relating to attempts by the defense to win dismissal; stay discovery; derail the class action; prematurely appeal unfavorable rulings; seek arbitration; seek declaratory relief; compel discovery,[2] including discovery refused by Defendants based on purported privilege grounds;[3] move venue (including campaigns to remove the case to federal court, to appeal to the Fourth Circuit Court of Appeals, and to have issues decided in the original jurisdiction of the Supreme Court); and to strike future damages. As the Court stated at the preliminary approval hearing, "This is the settlement of a hotly contested claim. I can't think of

[1] Related cases included Lightsey v. South Carolina Electric & Gas Company, Case No. 2017-CP-25-335 (Hampton County Cir. Ct.), Glibowski v. SCANA Corp., No. 9:18-273-TLW (D.S.C.), Luquire, et al. v. Marsh, et al., No. 5:19-cv-2516-TLW (D.S.C.); SEC v. SCANA Corp., 3:20-cv-00882-MGL (D.S.C.).

[2] I have in mind here such actions as efforts on the part of the SCANA-Santee Cooper joint venturers to suppress disclosure of important evidence. In support of this opinion, I attach as Exhibit 2 hereto Plaintiffs' Motion to Compel filed Feb. 3, 2020, and Plaintiffs' Reply to Defendants' Opposition to Motion to Compel, filed February 10, 2020. These filings describe the lengths to which Defendants went to suppress the disclosure of facts. These documents also testify to the unceasing vigilance and tenacity that was required of class counsel and was delivered in exemplary fashion.

[3] The privilege claim battle was fierce and telling. When a sample of 66 allegedly privileged documents was reviewed by the Special Master, the Honorable Jack Kimball, he found that more than half of the batch, 37 documents in total, were not privileged. This led to the production of more than 14,000 additional documents to which privilege claims had been made. As stated in Class Counsel's Fee Petition, in that discovery production, "Class Counsel identified numerous documents that involved no counsel, dealt with third-party communications and media inquiries, and other documents with no facially plausible assertion of privilege." Fee Pet. Memo. 11. For more detail about Class Counsel's struggle to uncover evidence, see Jessica Fickling Aff. ¶¶ 5-9. The great breadth of the parties' discovery disputes is emblematic of the underlying litigation's tremendous scope and difficulty.

one more hotly contested than this." Preliminary Approval Transcript, 44:24-45:1 . Neither can I. This case was a battle royal.

6. From the written record, it is abundantly clear that this litigation over the demise of the V.C. Summer nuclear project has been bitterly contested. This lawsuit and its related cases represent a huge mass of brutal, big-case litigation without parallel in the annals of South Carolina's courts. The litigation has produced a written record reflecting supreme tenacity by counsel for both sides.

7. The record shows this legal battle to be the courtroom equivalent of a heavy-weight championship prize fight, with every litigant being represented by top-flight legal counsel bent on delivering excellent client service. According to Judge Jean Toal who is intimately acquainted with all aspects of the V.C. Summer project catastrophe, and its aftermath – legal, factual, logistical and historical – the proposed settlement reached in this case "is by far the largest settlement . . . of its type in this state." Preliminary Approval Transcript 7:11-12 (statement of Judge Toal).[4] That settlement was the product of prodigious effort on both sides. In preparing this Affidavit, I have studied that effort. It has enlightened and guided my opinions and the reasoning presented in this Affidavit.

FACTUAL BACKGROUND

8. An outline overview of the historical record concerning the ill-fated V.C. Summer nuclear plant from February 12, 2004 to February 25, 2020 is attached hereto as Exhibit 3.

[4] For a report on the preliminary settlement hearing, see Avery G. Wilks, $520 Million Settlement for Santee Cooper, Electric Co-op Customers Headed Toward Approval, The Post and Courier, Mar. 17, 2020, available at https://www.postandcourier.com/business/million-settlement-for-santee-cooper-electric-co-op-customers-headed/article_44ee1268-6795-11ea-a11b-93b1ce04cb70.html.

9. This case's enormity and complexity was captured by Judge Toal at the hearing when the Court gave preliminary approval to this settlement:

> I might say at the outset . . . this is . . . quite a remarkable accomplishment in one of the most complex pieces of litigation in my 50-plus years of practice I have ever seen filed and pursued . . . in Circuit Court in the State of South Carolina.
>
> And I would venture to say that the proposed settlement in this case is, by far, the largest settlement or potential verdict of its type in the state. It involved the extreme diligence of some of the most capable lawyers in South Carolina and in the nation.
>
> It's been a privilege for me to work with you, as you, in a very adversarial way, pursued the various positions that you take on behalf of your clients, but always with civility. I very much appreciate that. We've had some very intense meetings, including not only discovery depositions and the usual pretrial things, which are much complicated by the nature of this litigation, but also, we've had two lengthy and intense judge-led mediations of this matter.
>
> And no quarter was given or . . . expected as we tried to navigate the issues in this case and examine them through the lens of what is the right thing to do for the ratepayers who brought this lawsuit.

Preliminary Approval Transcript, 7:1-8:2 (emphasis added).

10. The huge investment of lawyer time and energy in this lawsuit is evidenced by Exhibit 4 hereto. It lists the 71 different Motions filed by counsel in the case. Each Motion, of course, was briefed by counsel for the various sides and, in many cases argued to the Court. Exhibit 4 shows that this case was an epic legal struggle. Likewise, Exhibit 5 hereto is a chart listing the 32 depositions taken and 43 scheduled to be taken when this sprawling and hotly contested matter was settled. Exhibit 6 itemizes the 10 different Court hearings convened in this matter, extending back to 2017, and not including the March 17, 2020, hearing on Plaintiffs' motion for preliminary approval of the class action settlement agreement. These different exhibits, chronicling the work done in this case, provide a glimpse into this case's scope, importance, and distinctly arduous, hard-fought character.

12. Through my background, training and experience, I am well familiar with matters of corporate governance, proper public disclosure of key facts, fiduciary duty, white collar crime, and business and legal ethics. Drawing from years of work both within and outside the classroom, I can testify without qualification that the implosion of the V.C. Summer project, and the ensuing attempted coverup, represents the single largest example of managerial malfeasance in South Carolina history.[5] That implosion was a litigation-breeder par excellence. As Class

[5] This is no exaggeration. The Securities Exchange Commission recently had some highly uncomplimentary things to say about the honesty of certain individuals involved in the nuclear project. The following quote is taken from the fraud complaint the SEC filed against SCANA et al., as the captioned case was on the road to resolution:

> 332. On October 20, 2016, SCANA's nuclear team, including Byrne, and Santee Cooper personnel attended another meeting with Westinghouse regarding the lack of progress on the expansion project. At the meeting, a member of SCANA's nuclear team noted that "there are so many loose ends" that he doesn't have "a high level of comfort that we will be successful." Another member of SCANA's nuclear team noted that construction progress was still lagging behind where it needed to be in order to complete the project on schedule. In short, SCANA's nuclear team emphasized to Westinghouse that they need "more energy and commitment to meeting schedule dates" and that they need to "look at how they are managing schedule adherence."
>
> 333. At the same meeting, an executive from Santee Cooper questioned whether achieving the required monthly progress necessary to complete Unit 2 and Unit 3 under the schedule was "a pipe dream" and if they will "ever get there."
>
> 334. A week later, on October 27, 2016, Byrne participated in SCANA's third quarter earnings call. In a PowerPoint presentation for the call, Byrne misleadingly noted that the "new in service date[]" for Unit 2 was August 31, 2019, and for Unit 3 was August 31, 2020. At the time he made these statements, Byrne knew that neither unit would be completed by those dates. Byrne also indicated that a recent agreement with the ORS "supports the approval of the revised construction and capital cost schedules." Byrne failed to disclose that SCANA had withheld information from the ORS, including that SCANA's own nuclear team had determined that the schedule was unreliable and that SCANA's senior management had informed the company's Board of Directors of that determination.
>
> 335. On the call, Byrne further stated that SCANA was "very happy with what Fluor [Westinghouse's new sub-contractor] is doing for us" and that "they've been very successful recently."
>
> 336. SCANA posted the transcript from the earnings call and the PowerPoint presentation on its website. In addition, investors were allowed to listen to the earnings call.
>
> 337. On November 4, 2016, SCANA filed a Form 10-Q with the SEC that repeated the same false and misleading statements that the company made in its earlier filings.
>
> 338. SCANA's Form 10-Q also omitted the true status of the nuclear expansion project, including the unreliability of the schedule and the serious doubts about the new units qualifying for the production tax credits. [cont'd]

Counsel Edward Westbrook explained to the court at the hearing on preliminary approval, "the claims, the cross-claims, the third-party claims, the proposed arbitration claims in this case were astounding." Preliminary Approval Transcript, 11:4-6.

13. Like the challenges faced by the naval staff of an ocean-liner hit by a torpedo, the multi-faceted crises faced by SCANA and Santee Cooper managements called for immediate, honest, forthright action, not dithering, and not coverup. The situation was never going to improve if facts were hidden and the problem was neglected. Through the steadfast determination of Class Counsel, the true facts emerged, and the case was properly prepared for trial. By the time the case was settled, Class Counsel had the proof they needed to present a competent case at trial. The "case was settled, if not on the eve of trial, as we marched toward an impending trial that [Judge Toal] made clear was going to happen. And that woke everybody up." Preliminary Approval Transcript, 12:20-23 (statement of Edward Westbrook).

14. Through give and take over the negotiating table, differences were whittled down and resolved. The case "was settled after intense negotiations. [Judge Toal] is intensely familiar with those. [She was] there after 2 a.m.," Preliminary Approval Transcript, 12:24-13:1

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339. In accordance with Rule 13a-14 of the Exchange Act and Section 304 of the Sarbanes-Oxley Act, Marsh certified that he had reviewed the periodic filing and that it contained no untrue statements. Marsh knew, however, that his certification was false and misleading.

340. In addition, Byrne knew that the information in SCANA's periodic filing was false and misleading. Nevertheless, on November 4, 2016, Byrne signed a sub-certification letter in connection with the filing that falsely stated he had "no knowledge of any fraud or suspected fraud affecting SCANA or SCE&G[.]" SCANA required this sub-certification before filing the Form 10-Q.

United States Securities and Exchange Commission v. SCANA Corp., et al., C.A. No.: 3:20-cv-00882-MGL (D.S.C., Filed Feb. 27, 2020).

(statement of Edward Westbrook). [6] Judge Toal's unstinting efforts overseeing the negotiating process that produced the just settlement agreement that has been presented for Class approval.

15. That negotiating process came after strenuous efforts on the part of Class Counsel and Defense Counsel. By the time a preliminary settlement was reached, "the parties [had] taken over [30] depositions; [had] exchanged or reviewed millions of pages of documents; [and] were preparing . . . expert witnesses and other evidence for submission at the trial . . . set for April the 20th of 2020." Preliminary Approval Transcript,16:18-22 (statement of James Ward). In seeking evidence, Class Counsel cast a wide net. "Santee Cooper produced more than 40 individual tranches of documents, while SCE&G produced 26. The defendants collectively produced over 2.5 million pages of documents." Jessica Fickling Aff. ¶ 3. Numerous batches of documents were received from the Defense and from non-party entities and individuals such as electric co-cops, auditors, and consultants. Fee Pet. Memo. 9. All of these many materials needed to be and were carefully reviewed by Class Counsel.[7] As the Court is well aware, the parties sought and received judicial rulings "numerous times . . . on very complicated issues of law, along with class certification [and] discovery motions." Preliminary Approval Transcript, 16:9-11 (statement of James Ward). Since the construction stopped on the V.C. Summer project at the end of July in 2017, lawyers' work has been incessant.

16. Proof of this trail of hard work is evidenced by a scorched-earth path running through the Circuit Court, the South Carolina Supreme Court, in the South Carolina Federal

[6] The mediation bore fruit on the second day of back-to-back sessions on February 18-19, 2020. Evidently, sixteen hours of negotiation took place on the 19th. Preliminary Approval Transcript, 17:14-20.

[7] As stated in Class Counsel's Fee Petition, this trove of data "included emails, correspondence, voicemails, text messages, notebooks, slide presentations, board minutes and materials, regulatory filings, complex financial statements, project metrics, construction plans, audit reports, consulting reports, human resources and compensation data, and project reports." Fee Pet. Memo. 9.

District Court, and in the Fourth Circuit Court of Appeals. Id. 16:13-17 (statement of James Ward). As Class Counsel state in their Fee Petition Memorandum, "Defendants' counsel did a magnificent job raising every conceivable defense and pursuing each vigorously." Fee Pet. Memo. 38. Defense counsel's mighty unstinting efforts were aimed at bolstering and protecting from opprobrium business managers who presided over a massive project that had "spiraled out of control , fallen years behind schedule, and incurred billions of dollars in cost overruns." Fee Pet. Memo. 3, with the burdens of those cost overruns destined to be dumped on ratepayers.

17. In my long experience, South Carolina has never seen such a calamitous breakdown of corporate stewardship. What is most corrosively disheartening is that the generously compensated fiduciaries in question here[8] obviously knew better. Without question, they deserved to be sued, to have their failings exposed, and to be ordered to face up to, and pay up for, in dollars and reputational disgrace, the immense harm they caused. Class Counsel's clients "were victimized by a decade of Defendants' decisions." Fee Pet. Memo. 1. Such miscreants deserve to be brought to heel and they were. By working assiduously to bring about this just result, it is obvious to me, and I find, that Class Counsel (with learned, impartial, and resolute judicial assistance) performed a truly praiseworthy public service.

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[8] As stated in the Affidavit of Gregory Galvin accompanying Class Counsel's Fee Petition, "Defendant SCANA paid its top five highest paid senior executives (including President, CEO, Executive Vice President, Senior Vice Presidents, President of PSNC, Controller) a total of . . . $123,445,335.00 . . . during the years 2008 through 2017." Galvin Aff. at 2. Mr. Galvin also found, "Looking at just those executives at the very top of the SCANA hierarchy, I have determined that the highest paid Three (3) Executives of SCANA were paid a total . . . $95,648,819.00 . . . during 2008 to 2017." These sums dwarf the fee requested in this case by Class Counsel. Likewise, the sum sought by Class Counsel is a fraction of the charges leveled by Santee Cooper against its customers on an ongoing basis. See Fee Pet. Memo. 44:

> [I]n 2017, the year that Class Counsel filed their claims, Santee Cooper charged its customers over $102 million in advance financing charges. At the time of settlement, Santee Cooper was still charging millions more per month in advance financing costs. The class action's enforceable rate freeze will help alleviate this continuing burden.

18. I offer the foregoing comments not to take cheap shots at disgraced executives, their employers, or their counsel, but to call attention to the size, scope, and grave seriousness of the massive and complex workload Class Counsel signed on to perform, and the pressures under which they labored. They handled a large, daunting legal job supremely well. For their stellar work, I find that Class Counsel well deserve the reasonable compensation they have sought in accordance with established South Carolina standards as discussed below.

AMOUNT OF FEES AND EXPENSES SOUGHT

19. Class Counsel announced the parameters of their request for fees and expenses in the Notice of Class Action that is being disseminated to the Class pursuant to Court Order. In that document, Class Counsel stated their intention to seek Court awarded fees to be paid from the Common Benefit Fund in an amount not to exceed 15 percent of the Common Benefit Fund and expenses advanced by Class Counsel to be paid from the Common Benefit Fund in an amount not to exceed two million dollars ($2,000,000.00).

EXPERT OPINION

20. Class Counsel seek a court awarded fee based on the percentage-of-the-fund method used in class settlements of this type under South Carolina law. See Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) (where the Supreme Court distinguished "common fund" cases such as this one, where the fund pays the Plaintiffs' attorney who created it, from the "fee shifting" cases, where the defendant pays the Plaintiffs' attorney's fees (and a lodestar method is appropriate). Each case turns on its own facts. In my opinion, based on the unique facts of this case, a fee award to counsel for the class in an amount equal to 15 percent of the total cash

common fund generated is proper and reasonable. By way of comparison, Judge Harwell noted in Dewitt v. Darlington Cty., S.C ., 2013 WL 6408371 , *9 (D .S.C. Dec. 6, 2013), that in common fund cases, "attorney's fee awards generally range anywhere from nineteen percent (19%) to forty-five (45%) of the settlement fund ."

REASONS FOR OPINION

21. Above all else, as I have described above, this is and always has been a very risky and difficult case. As stated in their Fee Application, Class Counsel "worked without hesitation on behalf of Santee Cooper's customers, even though lawyers in other states had failed in similar litigation." Fee Pet. Memo. 4 (emphasis added). From the start, Class Counsel have faced determined, talented opposition in processing this complex, challenging piece of litigation.

22. As outlined above, the laborious nature of this litigation is evident from the voluminous record already generated. The Defendants gave no quarter. They had a right to play hardball every step of the way leading to settlement, and they did so. For this they cannot be faulted. Their strenuous efforts are illustrated by court records chock full of motions and memoranda making every conceivable argument seeking to undo and derail Plaintiffs' case. Against this backdrop, I turn to factors deemed relevant in setting a fee award under South Carolina law.

FEE AWARD STANDARDS

23. In general, fees attorneys' fees are not recoverable absent a contractual or statutory provision. This is the so-called "American Rule." South Carolina recognizes an additional instance when legal fees may be recoverable.

> [An] exception to the American Rule recognized by this Court is the award of attorneys' fees pursuant to the common fund doctrine. The common fund doctrine allows a court in its equitable jurisdiction to award reasonable attorneys' fees to a party who, at his own expense, successfully maintains a suit for the creation, recovery, preservation, or increase of a common fund or common property. . . . Attorneys' fees awarded pursuant to the common fund doctrine come directly out of the common fund created or preserved. Id. The justification for awarding attorneys' fees in this manner is based on the principle that "one who preserves or protects a common fund works for others as well as for himself, and the others so benefited should bear their just share of the expenses."

Layman v. State, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008) (citing Petition of Crum. Johnson v. Williams, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941). This is a "common fund" case.

> 24. [W]hen awarding fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's "success." These courts consequently base an award of attorneys' fees on a percentage of the common fund created, known as the "percentage-of-the-recovery" approach. See, e.g., Edmonds v. United States, 658 F. Supp. 1126, 1144 (D.S.C.1987) (expressing a preference for a percentage-of-the-recovery method when awarding attorneys' fees from a common fund).

Layman v. State, 376 S.C. 434, 453, 658 S.E.2d 320, 330 (2008). There is no requirement that a fee award be limited to no more than a specific percentage of the plaintiffs' damages. Indeed, in Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), the court awarded a fee of $26,000 in a case where the prevailing plaintiff recovered a $16,161 verdict. I testified via affidavit for the petitioning lawyer in *Baron*.

25. Numerous other cases show that the 15% contingent fee sought in this case is entirely reasonable. South Carolina's Supreme Court in Global Protection Corp. v. Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (1998), approved a fee of one-third of the plaintiff's recovery, finding that contingent fee arrangements were common in complex cases, and that the typical range of such contingency fees was one-third to one-half of the recovery. 332 S.C. at 161, 503 S.E.2d at 489. After considering each of the six factors, the court decided that a fee of one-third of the recovery was reasonable. In Bazzle v. Green Tree Financial Corp., 351 S.C. 244, 569

S.E.2d 349 (2002), the South Carolina Supreme Court affirmed an award to the class of $10,935,000, accompanied by an additional $3,645,500 in attorney's fees and $18,242 in costs. More recently, in Edwards v SunCom, No. 02-CP-26-3539, 2008 WL 4897935 (S.C. Com.Pl. May 05, 2008), Circuit Judge Steven John upheld a one-third contingency fee in a class action, noting that:

> This percentage is set forth in the retainer agreement executed between Class Counsel and the named plaintiff and is within the range of reasonableness for attorneys' fees in a class action. See Boeing Co. v. Van Gemert, 444 U.S. 472 (1980) (holding that attorneys' fees for a class action may be based on the entire common fund even if some class members make no claims against the fund); Fairey v. Exxon Corp., No. 94-CP-38-118, Order filed October 9, 2003 (First Judicial Circuit) (J. Goodstein) (approving attorneys' fees and costs of $12,000,000.00 representing 40% of recovery); Alba Conte & Herbert Newberg, Newberg on Class Actions § 14:6 (4th ed. 2002) ("Empirical studies show that . . fee awards in class actions average around one-third of the recovery.").

In another case, Fairey v. Exxon Corp., No. 94-CP-38-118 (S.C., Orangeburg County Ct. Common Pleas Mar. 18, 1998), appeal dismissed (S.C. May 14, 1998), a fee award of 40 percent of the $30 million common fund accumulated for the class was approved by the Circuit Court. I was involved in the *Fairey* case on class action issues and filed an affidavit in support of the settlement and successful fee petition. In Anderson Memorial Hospital v. W.R. Grace, Inc., CA No. 92-CP-25-279 (Hampton Cty.), Judge Hayes awarded Class Counsel a 1/3 contingent fee in a class action settlement that generated a common fund totaling $57 million. I testified on the fee reasonableness issue in the Anderson Memorial Hospital case.

26. I can testify from personal experience that the fee sought here is substantial, but by no means unprecedented. In my opinion, this case can be analogized to the mega-fund cases that have generated large fee awards in other contexts. For example, the most well-known of the mega-fund case settlements was the $250 billion nationwide tobacco settlement. In the tobacco cases, a three-person arbitration panel evaluated the performance of plaintiffs' counsel in the

various state actions settled and awarded an appropriate percentage. In the Florida state tobacco case, In Re: Florida v. Am. Tobacco Co., No. CL-95-1466-AH (Palm Beach Co. Cir. Ct.), which generated a $13.2 billion recovery by the State, the panel awarded a 26% fee ($3.4 billion). I am familiar with the Florida arbitration fee award in that case, having testified as an expert in that arbitration. As Class Counsel points out in their Fee Petition Memorandum, the fee sought in this case is miniscule compared to the result of the Florida tobacco case fee arbitration and others like it. Fee Pet. Memo. 24, n.24.

GUIDING PRINCIPLES ON FEE REASONABLENESS

27. Under South Carolina law, a fee award calls for "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. Id. Consideration of all six factors is necessary but none controls.

28. As stated above, Class Counsel here seek an award of only 15 percent of the total cash relief generated by the litigation. I agree with Class Counsel that the fee sought would be a fair and reasonable fee when the totality of the six factors is considered. I now turn my attention to each facet of the South Carolina Supreme Court's six-factor test.

Factor #1: The Nature, Extent, and Difficulty of the Case

29. Based on my long experience in dealing with fee awards in a host of other complex cases, I believe that the first South Carolina Supreme Court fee award factor strongly supports a very substantial fee award. No independent observer of this litigation is more familiar with its "nature, extent, and difficulty" than Judge Toal. She has overseen the legal strife, the negotiations, and the settlement those efforts yielded. Her independent assessment of the case's size and course of proceeding merits extended quotation:

> [T]he parties have well set forth the detailed activities that were taken by the litigants to this complicated matter, which began in 2019[9] with the filing of a complaint. Many amended pleadings were filed. Much discovery was taken, including depositions, the exchange of over a million documents, much supervision by the Court, issues that arose with respect to confidentiality, with respect to the breadth of the requests for information, so that by the time we had the first mediation in October of 2019, the -- this litigation was at a mature state, where much was known by both sides. Then, a removal was had to federal court. And material continued to voluntarily be exchanged even during that period of removal. When the case was returned to this Court and I signed an order immediately setting a new trial date for April the 20th of this year, discovery and exchange of information was at the height of its maturity. All parties knew a great deal about the issues confronting them as the case would be tried.

Preliminary Approval Transcript 37:12-38:5 (Statement of Judge Toal).

30. I offer the following brief comments on Judge Toal's description of the lawsuit's history. First, as she stated, this case truly was complicated. It presented a vast number of legal and factual issues bitterly contested by talented counsel. It was a legal battle royal. Attesting to the case's complexity, 32 depositions were taken, with 43more scheduled when the case settled. Jessica Fickling Aff. ¶ 4. "[A] approximately 36 lawyers appeared in depositions on behalf of the Defendants, and witnesses were often represented by both personal and corporate counsel." Id. Further attesting to the case's broad scope, complexity, difficulty was the exchange, noted by

[9] The complaint in the Greenville iteration of the litigation was filed in 2019 after venue was transferred from Hampton County. The original Cook complaint was filed in 2017. See Complaint filed on August 22, 2017, in Cook v. South Carolina Public Service Authority, Hampton County Court of Common Pleas, Case No. 2017-CP-25-00348. A great many of the motions, etc., and orders filed in the case were filed during the period when the case was docketed in Hampton County.

Judge Toal, of more than a "million documents." The key word to me in that quote is "documents." Lawyers who are experienced in handling complex cases know that in such cases few documents consist of only one page. I am confident when I say that, in this case, millions upon millions of pages of documents were reviewed by both sides as part of their case preparation.

31. Further attesting to the case's breadth and difficulty, I note Judge Toal's gentle, oblique reference to the discovery process receiving "much supervision by the Court." In my experience, judges do not go out of their way to supervise lawyers' work. They are exceedingly reluctant to insert themselves into the discovery process. My experience is that judges become involved of necessity – only when the parties, after attempting to work out differences on their own, cannot agree on what needs to be done. I read Judge Toal's "much supervision" comment as a polite way of saying that the case featured sharply contested battles over access to information, which is another hallmark of complex, difficult, "big case" litigation. In such cases, the crucial evidence plaintiffs need is often found in the documents, and defendants are loathed to part with such evidence unless they must. Discovery battles are a hallmark of hard, hard, litigation, and this case regularly featured such battles.

32. Likewise, the case's difficulty is evidenced by Judge Toal's mention that when the "litigation was at a mature state, where much was known by both sides," the Defense sought to remove the case to federal court. This, too, is another sign that this case was fought tooth and nail with all conceivable ploys being attempted by the Defense to gain an advantage. In my experience, Defendants do not attempt to remove cases to federal court if they feel good about their chances of success if they proceed to trial in state court.

33. Finally, I note that, as Judge Toal pointed out in the quote above, this is a case that was on the brink of trial. At the time the preliminary settlement was reached, the lawsuit was mature. By that point, the parties (and the Court) all were well informed about the key facts and legal points that would be raised at trial. There is no better time for settlement than when each party has achieved 20:20 vision about the risks ahead.

34. It is important to note that the work done by Class Counsel was not done in a genteel way, during "banker's hours." Sifting through vast amounts of data was extremely labor intensive and called for considerable overtime work. "The unyielding flow of serial productions frequently required Class Counsel to work through weekends and/or all night to complete the review of documents produced by the defendants." Fee Pet. Memo. 10. This is the level of effort that big, complex cases demand, and it is what Class Counsel readily supplied. The arduous nature of this case was entirely predictable. The data generated to support this litigation are voluminous. That volume of needed data came at a large cost. To date, Plaintiffs' Counsel have made a litigation cost investment of over $1.5 million, and those costs are climbing. Few if any groups of plaintiffs' lawyers in South Carolina have the wherewithal and courage to advance such a large sum in pursuit of a hard and risky case where reimbursement is by no means assured.

35. The litigation's scope, novelty, and difficulty called for top quality lawyering, which is what Class Counsel supplied. As discussed below, I am personally aware of Class Counsel's abundant experience in handling class actions and other complex litigation. Class Counsel's knowledge of the applicable law is demonstrated by their ability to move this case inexorably to the brink of trial despite numerous efforts by the Defense to derail or dilute Plaintiffs' claims. The skill level presented by opposing counsel necessitated a high level of

performance by Class Counsel in this case. That high level of performance was supplied in spades.

36. It has been observed that "[a]dditional skill is required when the opponent . . . is a sophisticated corporation with sophisticated counsel." Smith v. Krispy Kreme Doughnut Corp., 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007). Similarly, in Brown v. Charles Schwab & Co., No. 2:07-CV-03852-DCN, 2010 WL 11534521, at *4 (D.S.C. Nov. 9, 2010), Judge David Norton explained that "The professional standing and expertise of opposing counsel also is an important factor in evaluating the quality of services rendered by Class Counsel and 'should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys.' Schwartz v. TXU Corp., No. 3:02-CV-2243-K, 2005 WL 3148350, at *30 (N.D. Tex. Nov. 8, 2005)." Here, the large entity Defendants and their affiliated personnel were represented by knowledgeable, litigation-specialized counsel, highly adept at handling complex cases. On the defense team were well-credentialed lawyers from the highly respected Haynsworth and Nelson Mullins law firms, as well as excellent defense lawyers from smaller firms such as James Griffin and William Coates.

37. The zealous defense of this matter offered by this A-Team of defense lawyers necessitated that Class Counsel provide diligent and competent representation to the Plaintiffs and the class for any hope of recovery to be realized. Class Counsel's achievement in obtaining an excellent outcome in this action, defended by such renowned counsel, is a testimony to the quality of Class Counsel's representation.

38. Another consideration related to the first South Carolina fee factor, is that class actions by their nature inherently increase the complexity of a case, as well as Class Counsel's potential malpractice exposure in the event something misfires. Assembling proof of facts

concerning far-flung actors, where construction and engineering issues are highly technical, witnesses have scattered, and crucial documents are hard to obtain posed a challenge to Plaintiffs' counsel. I emphasize that this case was difficult on virtually every possible level. Concluding it successfully is a tribute to Class Counsel's tenacity, special competence, zeal, attention to sound ethics, and professionalism.

39. Based on my knowledge, training, background, and experience, I have no hesitation in saying that Class Counsel's industry, ingenuity, and determination in prosecuting this case has been exemplary.

40. In my opinion, Class Counsel has consistently fought well against very powerful, sophisticated, and well-represented adversaries. I believe that few, if any, other counsel in South Carolina or anywhere else would have mustered the combination of teamwork, drive, doggedness, expertise, resources, and creativity to achieve the result Class Counsel did under the uniquely difficult circumstances presented by this case.

41. To repeat: Based on my careful study and long experience in dealing with fee awards in a host of other complex cases, I believe that the first South Carolina Supreme Court fee award factor strongly supports a very substantial fee award.

Factor # 2: The Time Necessarily Devoted to the Case

42. Based on information available to me, it appears that Class Counsel invested tens of thousands of hours in this case.[10] They did so with an unswerving commitment to client service, and, as stated in their Fee Petition without the luxury of being able to "piggyback" on

[10] In their fee petition, Class Counsel have offered to "supply the Court in camera with detailed time records if the Court desires." Fee Pet. Memo. p. 57-58, n.72.

government antitrust or securities investigations, Class Counsel were out in front of any government action. In fact, they aided the federal government in its V.C. Summer investigative efforts (which are continuing)." Fee Pet. Memo. 52 & n.67. Indeed, as this case was being wrapped up, the SEC's lawsuit against SCANA et al., was just being filed. See United States Securities and Exchange Commission v. SCANA Corp., et al., C.A. No.: 3:20-cv-00882-MGL (D.S.C., Filed Feb. 27, 2020).

43. The immense record in this case attests to the monumental size and complexity of the legal battles fought between Plaintiffs and their adversaries. This litigation doubtless is one of the largest, if not the largest, piece of civil litigation currently active on South Carolina's civil dockets. This case has been a time-eater and an energy pit. The time already spent translates into many years of lawyers' effort. Processing the pending settlement will require substantial additional time. All counsel involved are extremely busy professionals. The case settled because Class Counsel invested all of the many hours needed to move this case down the path toward trial.

44. There is a reason why so many hours have been spent on this case. As discussed above, the Defense fought fiercely, as was their right. By dogged persistence and dedication, Class Counsel demonstrated their ability to protect class members and secure a substantial award. The fee sought is justified based on consideration of many factors, of which the tenacity and skill of Plaintiffs' adversaries is one.

45. Based on my long experience in dealing with fee awards in similar complex cases, I believe that the second South Carolina Supreme Court fee award factor, time invested in the case, strongly supports the substantial fee award being sought.

Factor #3: The Professional Standing of Counsel

46. This factor counts heavily in Class Counsel's favor. Plaintiffs' lead counsel are South Carolina-based big-case experts and all are personally known to me. No reasonable lawyer would dispute the experience, reputation, and ability of Class Counsel. Taken individually and as a group, they enjoy extremely high professional standing in the South Carolina Bar. I have worked with lawyers with the Strom Firm; Richardson Patrick Westbrook & Brickman; the Bell Legal Group; Speights & Solomon; Savage, Royall & Sheheen and McGowan; Hood & Felder on various large and challenging cases over the years.

47. In my dealings with the above-named South Carolina lawyers and firms over the years, they have always worked diligently to serve their clients' interests.

48. Class Counsel represent an elite group of highly talented advocates. For example, sixteen Richardson Patrick lawyers are currently recognized on the list of Best Lawyers in America, including Class Counsel Terry Richardson and Edward Westbrook. They were assisted by Jerry Evans and Daniel Haltiwanger who is of counsel to the Richardson Patrick law firm. Terry Richardson and Ed Westbrook are two of the best lawyers I've ever seen. Mr. Richardson's peers named him one of the Top 10 attorneys in South Carolina in the 2016 edition of Super Lawyers. Messrs. Richardson and Westbrook played key roles in the strategic management of the overall litigation. I have worked with Mr. Evans, and he both an excellent lawyer and an excellent litigation manager. Mr. Haltiwanger has excelled as a plaintiffs' lawyer, leading litigation in diverse areas such as paving defects on I-20, and tire malfunctions leading to the Ford/Firestone recall. Messrs. Westbrook and Haltiwanger served on the Plaintiffs' Law Committee. Each of the senior Richardson Patrick lawyers who worked on this case is highly

skilled in complex, big-case litigation, having served, for example as leading (and successful) litigators in both the asbestos and tobacco wars. Assisting them was another member of the Law Committee, TAC Hargrove, who ably assisted by performing key research and trial preparation tasks, like working with experts and getting deposition designations ready.

49. Joining Messrs. Richardson, Westbrook and their firm's lawyers at the forefront of the charge for Plaintiffs was J. Preston Strom and lawyers from his fine firm. The Strom firm has been widely recognized for doing outstanding work in big cases. Mr. Strom, a former United States Attorney for the District of South Carolina, has been listed as one of America's Best Lawyers since 2010. He was assisted by his fellow Strom Law Firm attorneys, including, John Alphin, and Jessica Fickling. The strong and important work in the case by Ms. Fickling and Mr. Alphin is detailed in their affidavits filed with the Court. I have worked with the Strom firm. Its lawyers, particularly Ms. Fickling and Messrs. Strom and Alphin are well known to me for doing excellent work. As described in his Affidavit, Mr. Alphin has strong credentials in the financial analysis area, a background that enabled him to play a key role in the assessment of the financial portion of the case, as well as the trial strategy.

50. Dan Speights of the Speights and Solomons firm in Hampton is also a veteran of the asbestos wars, and many other epic legal battles. Mr. Speights, for example, has tried and settled more asbestos property damage cases than any other lawyer in the country. He was instrumental in negotiating and bringing to fruition the giant Celotex asbestos bankruptcy payout plan. Mr. Speights was assisted by his partner, Gibson Solomons, who is personally known to me as an excellent lawyer. Both Messrs. Speights and Solomons have won numerous landmark cases in the asbestos field and elsewhere. Mr. Solomons also has been involved in class actions related to farming and crop disputes, hazardous substances and the resulting real property damage,

product defects like construction and automobile products, and contractual disputes. I have assisted both Messrs. Speights and Solomons as an expert on various cases and can testify personally to their unstinting efforts on behalf of their clients and the high quality of their work.

51. Likewise personally known to me for doing excellent legal work is J. Edward Bell, founding partner of the Bell Legal Group, LLC in Georgetown. Mr. Bell was recently inducted into the Inner Circle of Advocates, an invitation-only group with membership limited to 100 of the best plaintiff trial lawyers in the United States. In a career spanning more than 30 years, he has distinguished himself as a top litigation attorney at the local, state and national levels. He has tried more than 300 major cases throughout the United States. Mr. Bell also serves as President and Managing Partner of the Charleston School of Law. In this case, Edward Bell and Gabrielle A Sulpizio, of Bell Legal Group LLC reviewed discovery documents, participated in mediation, collaborated regarding a key expert witness (Dr. Wood), developed discovery strategy, appeared at hearings, developed trial strategy, and planned on being part of the trial team.

52. Besides being a deeply respected public servant, Class Counsel Vincent Sheheen of Savage, Royall, & Sheheen, LLP, is, based on my personal knowledge and experience, a gifted lawyer, known for the passion and thoroughness he brings to serving his clients, including businesses and individuals involved in complex business litigation.

53. Another leading complex litigation firm that served Plaintiffs is McGowan, Hood & Felder. This law firm chaired the Plaintiff's Law Committee and, crucially, led the litigation team that defeated SCANA and Santee Cooper's motions to dismiss. I am very well familiar with the firm and its lawyers. They have an enviable reputation for generating excellent results for their clients. For example, in the Spartanburg Regional Health Services case, the McGowan

Hood firm generated an award that Judge Henry Floyd's order recognized as being at "the high end of the spectrum for cash awards paid in any antitrust case in the history of American jurisprudence." Spartanburg Regional Health Services District, Inc. v. Hillenbrand Indus., Inc. 7:03-cv-02141, 2006 WL 8446464 *5, Order Filed August 15, 2006, ECF No. 377, at 10.

54. Adding technical litigation expertise for Plaintiffs in this massive litigation effort was Gregory Michael Galvin of the Galvin Law Group. Mr. Galvin was instrumental in creating and utilizing a computer platform with Nemo software to search the approximately one million documents produced by Defendants. This culling process enabled Plaintiffs to cull out the truly valuable pieces of evidence for use by the lawyers when preparing for depositions and motion hearings. Mr. Galvin was also charged with investigating the money spent by Defendants on salary and other benefits for the executives of the entity Defendants during the time when the companies were promoting, building, and eventually abandoning the V.C. Summer Nuclear Project. Mr. Galvin's unusual investigative and technological lawyering skill has been recognized by the South Carolina District Court which awarded him a Distinguished Service Award.

55. The McCullough Kahn firm is very well respected and played important roles on several fronts. I have worked with its lead lawyers, Clay McCullough, Jamie Kahn, and Ross Appel on multiple cases, and know them to extremely skillful and highly professional litigators. Their work in this case was cutting edge effort. That hard work received a compliment and a vote of confidence from one of the defendants, Central Electric Power Cooperative, Inc., which used one of McCullough Kahn's legal theories in asserting its own crossclaim against Santee Cooper. In addition to working intensely on drafting pleadings, discovery requests, and briefs,

McCullough Kahn lawyers assisted pressuring insurers to contribute to the settlement and in the effort to hammer out a global settlement.

56. It is obvious to anyone familiar with litigation in South Carolina that Plaintiffs have had the benefit of an All-Star lineup of leading lawyers. They are all consummate professionals. I have dealt with them numerous times. I have always been impressed by their drive, ingenuity, thoughtfulness, and brutal, unstinting determination to do everything needed to protect and benefit their clients.

57. Those legal counsel are more than successful, big-name lawyers, they qualify as "lawyers' lawyers." They sport enviable reputations for good reasons. They are a well-seasoned group. It comes as no surprise that, in this case, true to form, these experienced, savvy lawyers jelled into and performed as an outstanding litigation team. The lawyers whom I personally know well are tireless, outstanding advocates, and I say this based on many years of close observation. Based on my review of their work-product, I can say the other lawyers likewise are highly effective advocates. The enviable settlement that these "Who's Who" level counsel bring forward for court approval speaks for itself.

58. This case required experienced, tenacious, hard-hitting service from Plaintiffs' lawyers. And that is precisely the brand of lawyering Plaintiffs received. Plaintiffs' lawyers meshed into an excellent team, a team sophisticated and dedicated enough to bring a very formidable and well-represented adversary to heel. Class Counsel's deep and wide experience means there was little risk of wasted time or duplicative effort.

59. To sum up, in my opinion, as an expert in the field, Plaintiffs have had the benefit of truly outstanding advocacy. Accordingly, based on my long experience in dealing with fee

awards in class action cases, I conclude that the third South Carolina Supreme Court fee award factor strongly supports a very substantial fee award.

Factor # 4: Contingency of Compensation

60. As stated by Judge Matthew Perry in Smith v. Sec. of HHS, No. 79-1781-O, 1983 WL 44252, at *1 (D.S.C. Dec. 22, 1983): "The contingency of compensation, whether it stems from an employment contract or results from the claimant's indigency, is highly relevant in the appraisal of the reasonableness of any fee claim. The effective lawyer will not win all of his cases, and any determination of the reasonableness of his fees in those cases in which his client prevails must take account of the lawyers' risk of receiving nothing for his services." This was a contingent fee case from its inception. This case was no slam-dunk. A similar class action brought by experienced counsel in Florida failed.[11] When Class Counsel undertook this matter, they faced the risk of receiving nothing for their labor. They had no way of predicting the stupendous outcome they ultimately achieved. At the outset of the litigation, when Class Counsel made the decision to undertake the representation, their prospects for ultimately receiving compensation were very much in doubt. [The potential for a total loss by Plaintiffs' Counsel was sufficiently daunting to dissuade a highly skilled lawyer not to become involved. Fee Pet. 39. The lack of interest among South Carolina's corps of excellent plaintiffs' lawyers testifies to the great risk facing the intrepid litigators who dared to take on South Carolina's two power-generating behemoths and those who managed them. Besides investing many thousands of hours of their time, Class Counsel have placed at risk substantial advanced costs, exceeding

[11] Newton v. Duke Energy Florida, LLC, No. 16-cv-60341-wpd, 2016 WL 10564996 (S.D. Fla. 2016), aff'd, 895 F.3d 1270 (11th Cir. 2018).

$1,540,000.[12] Indeed, very, very few law firms in South Carolina can front costs running into seven figures as Class Counsel have. This action attests to their client loyalty, their total commitment to their clients' cause, and to their professional diligence. I reiterate at this point that undertaking this case posed real financial risk for Class Counsel.

Factor # 5: Beneficial Results Obtained

61. The United States Supreme Court has deemed the "results obtained" in litigation to be a key factor in assessing the reasonableness of a fee. See Hensley v. Eckerhardt, 461 U.S. 424, 434 (1983). See also Littlejohn v. State, 2002 WL 34454074, *5 (S .C. Cir. 2002) aff'd sub nom Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003) ("Ultimately when a 'common fund ' is generated for the benefit of the class, the result is everything.").

62. Next to the 20-year payout to the State by the cigarette companies totaling $1.7 billion, the result achieved in this lawsuit stands as the largest cash recovery in South Carolina litigation history. This outcome – a $520 million[13] settlement fund, is so huge it approximates the total sum of actual damages that would have been realized by a victory at trial, calculated by John Alphin to be approximately $540 million. On top of the enormous cash payout, Santee Cooper's customers are gaining another financial benefit thanks to Class Counsel's effort in

[12] See Jerry Evans Aff. ¶ 4, listing total Class Counsel's expenses at $1,541,595.84.

[13] As stated in Class Counsel's Fee Pet. Memo. at 43, n.58:

> While the total cash settlement is $520 million, Santee Cooper will be paying its $200 million contribution in three (3) payments. Class Counsel have calculated the discounted value of that $200 million payment stream to be approximately $196.5 million, using the same interest rate (1 .75%) the settlement provides for SCE&G's payment. At the same time, Class Counsel negotiated to require SCE&G to pay interest on its payment for the period beginning shortly after preliminary approval until the payment's release to the Class after final approval. This amount, approximately $2.4 million, will be part of the common fund . Thus, the total common fund will be approximately $519 million in present cash value on the settlement's effective date.

achieving this settlement. That additional benefit comes in the form of rate relief amounting $510 million in future costs that Santee Cooper customers will save through the end of 2024 due to a rate freeze imposed by the settlement. See Alphin Affidavit ¶¶ 4-7. See also Brantley Affidavit ¶ 5 (discussing the large amount of money to be saved in the future due to the rate freeze). This wonderful result in the form of a huge cash payout and future savings to Santee Cooper customers was achieved only after a titanic struggle with the team of defense counsel which, as noted above, consisted of firm and "big case" lawyers having enviable reputations who are personally known by me to be very excellent attorneys. Plaintiffs' case was prepared with all the care needed for Class Counsel to do a first-rate job.

63. This case has been marked from the start by careful, determined, highly professional preparation. Obviously, lawyers for the class have achieved a very good final result. This victory is a tribute to aggressive, heady, creative lawyering by Class Counsel. They have performed admirably for their most deserving clients. I reiterate that I consider the 15% contingent fee payout based on a settlement fund of over one-half billion dollars in cash to be fair and reasonable.

Factor # 6: Customary Legal Fees for Similar Services

64. It is true that fees for like work are "to be calculated according to the prevailing market rates in the relevant community." Blum v. Stensen, 465 U.S. 886, 895, 104 S. Ct. 1541, 1547 (1984). In my opinion, the fee sought here is unquestionably appropriate based on the fee percentage in relation to the cash amassed in the common fund. The South Carolina Supreme Court recognized in Global Protection Corp. v. Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (1998), the customary fee in South Carolina for complex cases accepted on a contingent-fee

basis ranges from one-third to one-half of the gross recovery. Global Protection, 332 S.C. at 161, 503 S.E.2d at 489. I personally have participated in very difficult cases where contingent fees of as much as 50 percent were collected. See also Miller v. Botwin, 258 Kan. 108, 899 P.2d 1004 (1995) (court allowed 50 percent contingent fee for amounts the attorney saved the client in property taxes). As noted above, Judge Harwell observed in Dewitt v. Darlington Co., 2013 WL 6408371 (D.S.C. 2013), quoting from Bredbermer v. Liberty Travel, Inc., 2011 WL 1344745 (D.N.J. Apr.8, 2011): "[C]ases from district courts throughout the country in common fund cases [reflect that] attorney's fee awards 'generally range anywhere from nineteen percent (19%) to forty-five percent (45%) of the settlement fund.'"

65. The Court should use the prevailing market rate in the community for similar services of lawyers "comparable skill, experience, and reputation." Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210-11 (9th Cir. 1986). With complex class action cases of this sort, the community is nationwide in scope. In contingent fee cases, fees in the local community ordinarily tend to range from 30-40 percent. This is not an ordinary case or an ordinary result. The case is extraordinary and so is the result. I also take into account results in other cases in which I testified, including Judge Johnson's fee award order in Lackey v. Green Tree Financial Corp., Civil Action No. 96-CP-06-073 (July 24, 2000), and Judge Ervin's fee award order in Bazzle v. Green Tree Financial Corp., Civil Action No. 97-CP-18-258 (July 24, 2000). In both of those hard-fought attorney preference cases, fees equal to one-third of the common fund were awarded. In Fairey v. Exxon Corp., Civil Action No. 94-CP-38-118 (C.P. Orangeburg County), a fee award of 40 percent of the $30 million common fund accumulated for the class was approved by the Circuit Court. I was involved in the Fairey case on class action issues and filed an affidavit in support of the settlement and successful fee petition. This case was riskier, far more complex,

and more bitterly contested than Lackey, Bazzle or Fairey. I consider the fee reasonable in light of all relevant facts, including the delay in payment, the staggering amount of work involved, the excellent result, and the fact that counsel had to litigate strenuously and at length in multiple forums to advance the interests of the class.

66. Also relevant are some other less demanding and less complex cases with which I am personally familiar. The fee award approved by the Circuit Court in Carter v. Wal-Mart Stores, Inc., Civil Action No. 06-15-839 was 1/3 of the $49 million common fund, a percentage less that that granted in the similar Wal-Mart employee pay cases of Lerma v. Wal-Mart Stores, Case No. CJ-2001-1395 (Cleveland County, Oklahoma, March 16, 2009, Order) (granting fee amounting to 40% of the $42,500,000 common fund); Hale v. Wal-Mart Stores, 01-cv-218710, 16th Judicial Circuit Court, Jackson County, Missouri (May 28, 2009, Order) (granting an award of 38.3% of the $90,000,000 common fund). In another Wal-Mart class action, Ouellette v. Wal-Mart Stores, Inc., File No. 67-01-CA-326 (Washington County, Florida, Circuit Court), in an Order dated August 21, 2009, the Court, applied Florida law which required a lodestar/multiplier analysis. Wal-Mart had agreed to pay up to $148,000,000. The amount of fees sought was $49,333,333, which was one-third of the common fund. Though the court was required to use the lodestar-multiplier approach, it nonetheless approved the fee sought, using a lodestar multiplier of 4.68, though noting that a "multiplier of 5 would be appropriate." Id. at p. 8, ¶ 30. I am familiar with these facts since I was a witness in the Ouellette case and testified at the fee hearing in Chipley, Florida

67. In Maddox v. First American Companies, Case No.: 96-CP-07-599 (C.P. Beaufort County), I participated as counsel in a complex securities class action that was settled

as to most defendants. The court awarded Class Counsel a fee based on one-third of the amount recovered through settlement. Maddox was a much simpler case than this one.

68. In other far less complex class action cases, 1/3 fee awards have been approved. Malanka v. deCastro, Fed. Sec. L. Rep. (CCH) ¶ 95,657, 1990 WL 253610 (D. Mass. 1990), featured a payout to Class Counsel of approximately 1/3 of the settlement fund. So did In re Fiddler's Woods Bondholders' Litigation, Fed. Sec. L. Rep. (CCH) ¶ 93,537, 1987 WL 19239 (E.D. Pa. 1987), also a securities case. So did O'Donnell v. Northland Madison at Park West, LLC, (S.C. Ct. Com. Pls., Ninth Cir. 2010-CP-10-9095. In a March 20, 2015, Order, issued in that Charleston Circuit Court case, Judge Newman granted a one-third contingent fee in a condominium construction defect class action where the common fund was $6.3 million. This case was far more difficult than either Malanka, In re Fiddler's Woods Bondholders' Litigation, or O'Donnell.

69. Each case stands on its own facts. Here, the fee sought by Class Counsel is more than fair when compared to those approved previously by South Carolina state court judges and Federal District Court judges. Likewise, based on my knowledge, training, background and experience, the fees sought by Class Counsel are clearly reasonable when viewed from a national perspective. Likewise very reasonable is Class Counsel's application for expense reimbursement.

SUMMARY

70. As I have explained above in detail, this has been a difficult and unusual case against a determined, resourceful and exceptionally well-represented adversary.

71. Class Counsel, from top to bottom, are exemplary lawyers, and the result they have achieved in this case proves it. They are an elite group. They represent a self-selected All-

Star cast of South Carolina's most experienced and talented "big case" lawyers. The issue is how to treat fairly those who have done an enormous amount of work under tough conditions supremely well. I believe that outstanding, truly superior legal work such as reflected in this case deserves to be recognized as such, and rewarded as such, and excellence on the part of Class Counsel's team is what I find evidenced by the voluminous records chronicling this important and hard-fought lawsuit.

72. In summary, as stated in their Fee Petition, Class Counsel have indeed achieved "extraordinary success in an unprecedented effort using novel theories of recovery." Fee Pet. Memo. 55-56. I recommend that the proposed settlement be approved and that lass Counsel's application for fees and costs should be granted. I hold this opinion to a reasonable degree of professional certainty as an expert in the field of legal fee awards in complex class action cases.

73. Further affiant sayeth not.

John P. Freeman

John P. Freeman

SWORN TO AND SUBSCRIBED BEFORE ME
this 26th day of May, 2020.

NANCY K. FREEMAN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
02/07/2021

Notary Public for the State of Washington
My Commission Expires: February 7, 2021

RESUME
John P. Freeman
Professor of Law Emeritus

Address and phone numbers:

200 West Highland Drive
Unit 107
Seattle, Washington 98119
(803) 361-6934
jfreemanusc@gmail.com

Education history:

LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)

Employment history:

1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South Carolina

1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977

1978-2008, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, summer 1978

Present:

Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus

EXHIBIT 1

Honors and Awards:

Undergraduate:	Member Beta Alpha Psi (Honorary Accounting Fraternity)
Law School:	Executive Editor, Notre Dame Lawyer; Distinguished Military Graduate At University of South Carolina Law School: Senior Class Annual Outstanding Faculty Award of 1975, 1976, 1977, 1984
Professional:	Winston Churchill Award, South Carolina Jury Trial Foundation 1995; Distinguished Service Award, South Carolina Trial Lawyers Association 2000; Appointed Member, South Carolina Judicial Merit Selection Commission; John Belton O'Neall Inn of Court McDonald/Rhodes Award 2010
Admitted to Practice:	Ohio; South Carolina; Washington
Teaching History **Courses Taught**:	Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, 1999-2008, Regular Legal Ethics Column for the South Carolina Lawyer.

Article, Protecting Judicial Independence, 6 Charleston L. Rev. 511 (2012).

Article, Appearance of Impropriety, Recusal, and the *Segars-Andrews* Case, 62 S.C.L. Rev. 485 (2011).

Article (with Stewart Brown and Steve Pomerantz), Mutual Fund Advisory Fees: New Evidence and a Fair Fiduciary Duty Test, 61 Okla. L. Rev. 83 (2008).

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law 739 (2007).

Viewpoint, Say No to Vending Machine Justice, S.C. Lawyer, July 2007, at 8.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004).

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article, (with Nathan Crystal), Scienter in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper? Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1-124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371-439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732-983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122-40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2004-16: Special Relationships and Legal Ethics, Oct. 14, 2016, S.C. Bar, Columbia, S.C.; Who's My Client? Understanding the Relationship Between In-House Attorneys, Members and Lobbyists, SC House of Representatives In-House CLE, Oct. 13, 2016, Columbia, S.C.; Incivility, Attempted Shaming and Other Ethics No-Nos, South Carolina Public Defender Ass'n, Sept. 28, 2016, Myrtle Beach, SC; Pascoe v. Wilson and other Ethics Lessons, Lexington County Bar Ass'n, August 4, 2016; Ethical Issues for South Carolina Environmental Practitioners, June 3, 2016, Columbia SC; Hot Ethics Issues for Environmental/Regulatory Practitioners, Jan. 22, 2016, S.C. Bar, Charleston, S.C.; S.C. Bar, Business Lawyer Horror Stories II, Oct. 3, 2014; Greenwood, S.C., S.C. Ass'n of Criminal Defense Lawyers, "Whose Theme and Theory is it Anyway?" July 11, 2014; Ft. Worth, Texas, Advice on Duties Owed by Members of the Board of Trustees, May 16, 2014; Charleston Bar Ass'n, 20 Ethics Tips for a Happier Professional Life, Feb. 7, 2014;2004-13: Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar March 22, 2013; SC Bar, Ethical Issues in Working with Vets and Their Families, Feb. 12, 2012; Expert Witness Participant, SC Bar-ABOTA, Masters in Trial Program, Feb. 1, 2013; SC Bar, Ethical Issues in Handling VA Appeals, Jan. 12, 2013; SC Bar, Ethical Issues in a Non-Adversarial System, Dec. 11, 2012; Richland County Bar Ass'n Ethics CLE, Nov. 9, 2012;University of South Carolina Law School, Alumni Reunion Ethics CLE, Nov. 3, 2012; General Assembly Legal Staff, Ethics for Government Lawyers, Oct. 3, 2012; Setzler Scott Law Firm (In-house CLE), West Columbia, SC, Ethics CLE, Feb. 14, 2012; Charleston Law School, Panel, Symposium on Lawyer and Judicial Fitness, Feb. 10, 2012; Charleston County Bar Ass'n, Ethics CLE, Feb. 3, 2012; SC Bar, Panel on Lawyer Confidentiality, Jan. 19, 2012; Nov. 15, 2011, SC Workers Comp. Comm., Legal Ethics; Richardson Patrick-Sponsored CLE, Charleston, SC, April 29, 2011; National Ass'n State Securities Administrators, Ethics in Securities Litigation, Charleston, Jan. 24, 20011; Richland County Legal Ethics Update, Nov. 5, 2010; S.C. Law Review Symposium, Judicial Recusal, Oct. 21, 2010; League of Women Voters, Lecture on Judicial Selection, Oct. 8, 2010, Charleston, S.C.; KershawHealth Board of Directors, Advice on Your Duties as Board Members, July 15, 2010, Camden, SC; American Ass'n of Matrimonial Lawyers, Ethics in Marital Cases, March

19, 2010 (Aruba), John Belton O'Neall Inn of Court, Ethics Lessons Taught by Lawyers, Nov. 17, 2009; South Carolina Defense Trial Lawyer's Ass'n, Judicial Selection in South Carolina, Nov. 7, 2009; Richland County Bar Ass'n, Legal Ethics, Nov. 6, 2009; South Carolina Legislature Employees, Legal Ethics Update, Oct. 21, 2009; Budget & Control Board, Ethics Lecture to SC State Employees, Oct. 2, 2009; South Carolina Bar, Family Law Ethics Update, Sept. 18, 2009; Motley Rice Law Firm, Legal Ethics Update, Sept. 11, 2009; South Carolina Judicial Selection Commission, Judicial Ethics, July 31, 2009; John Belton O'Neall Inn of Court, Ethics of Advertising Firms, Jan. 20. 2009; S.C. Bar, Ethics Presentation "Business Lawyer Horror Stories, Nov. 21, 2008; Participant, Mutual Fund Industry Regulation Roundtable, Chicago-Kent Law School, Nov. 7, 2008; SC Legislature, Ethical Duties of Legislative Employees, Oct. 2, 2008; SC Bar, Dealing with Ethical Duties When Dealing with Pro Se Parties, Oct. 10, 2008; Richardson Patrick Local Counsel CLE, Litigation Ethics, May 2, 2008 (Charleston, SC); Inst. of Public Utilities, 39th Ann. Reg. Policy Conf., Panel on Equity and Responsibility in the Public Utilities Sector (Charleston, SC), Dec. 3, 2007; S.C. Attorney General's Office; Litigation Ethics, Nov. 9, 2007; Richland County Bar, Ethics Update, Nov. 2, 2007; SC Bar, Litigation Ethics, Oct. 26, 2007; S.C. Children's Law Center, Ethical Problems in the Child Abuse Area, Oct. 19, 2007; National Ass'n of Medicaid Fraud Control Units, Ethics and the Government Lawyer (Savannah, Ga.), Oct. 1, 2007; SCACPA Litigation Conf., Litigation Ethics (Kiawah Island, SC), Sept. 21, 2007; S.C. Circuit Court Judges, May 17, 2007, Practice Tips in Civil Litigation; Energy & Mineral Law Foundation, May 15, 2007, Panel Member, Legal Ethics, 2 hr.; S.C. Government Investigators, Ethical Duties of Investigators, Feb. 23, 2007; S.C. Bar, Employment Law Section, Ethics Update, Jan. 26, 2007; S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for

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Member, ABA Section of Business Law Task Force on Legal Opinions
Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service
Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees
Promotion and Tenure
Faculty Welfare

Annuities and Insurance
Budget Committee

Law School Committees
Faculty Selection
Academic Standing
Minority Student Affairs
Executive Committee
Dean Evaluation Committee
Dean Search Committee
Chairman, Supreme Court Commission on CLE and Specialization(1980-83)
President, Leaphart Elementary School PTO (1983)
Chairman, Irmo Middle School School Improvement Council (1985)
Member, Irmo Middle School School Improvement Council (1985-89),
President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member Executive Board (1988-93)
Member, Irmo High School-School Improvement Council (1988-93)
Founder and Past-president, University of Notre Dame Club of South Carolina
Lexington District Five and South Carolina State School Volunteer of the Year 1993

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
		Case No.: 2019-CP-23-00675
Jessica S. Cook, *et al.*,	)	
	)	
Plaintiffs,	)	**NOTICE OF MOTION AND MOTION FOR *IN CAMERA* REVIEW AND MOTION TO COMPEL DOCUMENTS WITHHELD FROM PRODUCTION BY THE SCANA DEFENDANTS**
	)	
v.	)	
	)	
South Carolina Public Service Authority, *et al.*	)	
	)	
Defendants.	)	

TO: ATTORNEYS FOR DEFENDANTS SCANA AND SOUTH CAROLINA ELECTRIC & GAS COMPANY

Pursuant to Rules 26(b)(5)(a), 34, and 37 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Jessica Cook, on behalf of herself and all those similarly situated, brings this Motion for *In Camera* Review and to Compel against Defendants SCANA, South Carolina Electric & Gas Company, and SCANA Services, Inc., ("SCANA", "SCE&G" and/or "SCANA Defendants"), based upon the SCANA Defendants' willful and continued failure to produce documents that are not subject to privilege. Through this motion, Plaintiffs seek an Order from this Court for the immediate *in camera* production of the remaining 1,469 documents on the SCANA Defendants' November 21, 2019 privilege log.

BACKGROUND

The Court is well versed in the factual history of this case. Plaintiffs are the customers, both direct and indirect, of Defendant South Carolina Public Service Authority ("Defendant Santee Cooper"), who seek redress for Defendants' negligent, grossly negligent, and inequitable conduct related to the construction of two (2) nuclear reactors at the V.C. Summer site in Jenkinsville, South

EXHIBIT 2

Carolina ("the Project"). According to Plaintiffs' 5th Amended Complaint, for nearly a decade, Defendants collectively forced Plaintiffs to become advanced financiers of the Project, all while enriching themselves, their executives, officers, and directors, and shareholders.

The SCANA Defendants' abusive use of privilege has been an ongoing issue in the litigation of this case, culminating in a report issued by Special Master, the Honorable Jack Kimball, on November 9, 2019. (***Exhibit A***– Report and Recommendations as to Defendants' Claims of Privilege in Regard to Production of Documents). The report focused on a sample of 66 documents. Of these, Judge Kimball determined 37 were not privileged. This Court adopted Judge Kimball's recommendations in part and ordered the Defendants[1] to conduct another thorough review of their privilege logs, taking into account Judge Kimball's findings. The Court further ordered Defendants to produce any documents in categories where Judge Kimball rejected an assertion of privilege (e.g. business, financial, or contract documents), and ordered each Defendant to produce a singular revised privilege log[2], which was not only unified, but which better identified the basis of any underlying privilege.

On November 21, 2019, the SCANA Defendants produced a Unified Privilege Log containing 1,469 documents and contemporaneously produced 14,022 documents previously withheld in whole or in part. Upon examination, Plaintiffs determined that the new documents bore different bates ranges from previously produced documents. In other words, the SCANA Defendants had re-produced documents with different reference ranges, while simultaneously producing a single log covering the still-withheld documents, which also bore new reference ranges.

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[1] This motion addresses only the SCANA Defendants' Unified Privilege Log. Plaintiffs expressly reserve their right to file additional and/or subsequent motions as to the Santee Defendants' Unified Privilege Log, and any additional log(s) served by either the SCANA Defendants or Defendant Santee Cooper.

[2] At the time Judge Kimball issued his report, Defendants had collectively served eleven (11) privilege logs encompassing the then-current document production. As of today's date, the SCANA Defendants have made 26 document productions throughout this litigation, and Defendant Santee Cooper has made 48.

As the SCANA Defendants were undoubtedly aware, this re-shuffling of the prior production and logs greatly increased the difficulty of reconciling the new and former productions. The following day, on November 22, 2019, the SCANA Defendants removed the case to federal court.

During the interim of the removal, Plaintiffs have spent a significant amount of time reviewing the new production, as well as the new privilege log. Of the total documents on the new log, 495 are still fully withheld and 974 contain redactions. As discussed herein, the descriptions and custodians on the log continue to cause Plaintiffs concern as to the applicability of privilege over these documents. Accordingly, and for the reasons provided herein, Plaintiffs hereby respectfully ask this Court to Order the SCANA Defendants to produce the remaining documents identified on the Unified Privilege Log for *in camera* review.

STANDARD

Rule 26(f), SCRCP allows the court broad discretion to direct the discovery process in civil matters. In general, a trial court's decision on discovery issues will not be disturbed absent abuse of discretion. *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (S.C.App. 2001); *Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 628 S.E.2d 894 (Ct.App. 2006) (trial court's rulings on discovery will not be disturbed absent a clear abuse of discretion) citing *Belk of Spartanburg, S.C., Inc. v Thompson*, 337 S.C. 109, 126-27, 522 S.E.2d 357, 366 (Ct.App. 1999); *see Evening Post Pub. Co. v. Berkeley County School Distr.*, 392 S.C. 76, 708 S.E.2d 745 (2011) (finding the trial court erred in concluding as a matter of law that a school district's refusal to turn over documents requested by the plaintiff publication was permitted under an exception to the South Carolina Freedom of Information Act) .

ISSUES

I. *IN CAMERA* REVIEW IS THE ONLY WAY FOR THIS COURT TO RESOLVE THE SCANA DEFENDANTS' CONTINUED REFUSAL TO PRODUCE DOCUMENTS NOT SUBJECT TO PRIVILEGE

Review of allegedly privileged documents *in camera* does not constitute a waiver of privilege. *U.S. v. Zolin*, 491 U.S. 554, 109 S.Ct. 2619. Rather, the practice of producing documents *in camera* to avoid disclosure of information that may be privileged has been approved by the United States Supreme Court, and has been well-utilized by district courts. *Zolin*, 491 U.S. at 569, 109 S.Ct. at 2629; *see Kerr v. United States District Court for the Northern District of Cal.*, 426 U.S. 394, 404-405, 96 S.Ct. 2119, 2124-25 (1976). *See also In re Antitrust Grand Jury*, 805 F.2d 155, 168 (6th Cir. 1986); *In re Vargas*, 723 F.2d 1461, 1497 (10th Cir. 1983); *United States v. Lawless*, 709 F.2d 485, 486 (7th Cir. 1982).

The utility of *in camera* review to ascertain the application of privilege has also been recognized by the South Carolina Supreme Court. *See Evening Post*, 392 S.C. at 82, 708 S.E.2d at 748-749 (finding the lower court erred by ruling on a summary judgment motion before reviewing all of the contested documents *in camera*); *see also Davis v. Parkview Apartments*, 409 S.C. 266, 277, 762 S.E.2d 535, 540-41 (2014) (upholding discovery sanctions imposed by the trial court on a variety of bases including the failure of the parties to disclose documents after *in camera*). Thus, *in camera* review is an appropriate method to resolve ongoing issues concerning privilege, particularly where, as here, Plaintiffs have demonstrated facial challenges to the log that trigger further inquiry. *See Zolin*, 491 U.S. at 571-72, 109 S.Ct. at 2630-31.

Both Judge Kimball as well as this Court have reminded the Defendants that they are responsible for the privilege logs they produce, and that these logs should withhold documents or portions of documents only under legitimate bases. Specifically noting the factors in *Tobaccoville, USA, Inc. v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010), Judge Kimball found "much of the communication between the parties and their in-house, or outside counsel, involves the transmission of factual data that is discoverable…Also, the content of redacted communications (nearly all emails) does not ask for, or render, legal advice. Thus, those communications, as redacted, are not privileged."

Report, p. 2. Judge Kimball's findings, and this Court's admonishment to the parties in adopting Judge Kimball's recommendations, were important reminders that attorney-client and work-product privilege are the exception and not the rule, and should be utilized only when appropriate.

In light of these determinations, the following statistical analysis from the SCANA Defendants' most recent privilege log illustrates that the issues presented to Judge Kimball are far from resolved. For example, of the remaining 1,469 documents on the SCANA Defendants' Unified Privilege Log, 4% appear to be press releases or media inquiries intended for public consumption; 6% contain no counsel of record; 8% are copied to counsel, but counsel is neither an author nor primary recipient; and over 10% of the documents involve third-party assessments, such as the assessment conducted by Pricewaterhouse Coopers ("PwC"). As this Court has already found, PwC's engagement was not in anticipation of litigation, nor is there a plausible reason that the SCANA Defendants continue to withhold these documents – yet 26 documents on the Unified Privilege Log were drafted by PwC. In addition, 239, or over 16% of the documents on the Unified Privilege Log involve filings before the South Carolina Public Service Commission.

In total, over 30% of the log entries involve documents over which Judge Kimball provided preliminary guidance[3], or this Court determined no privilege applies. Additional conferral will not cure these deficiencies. Instead, *in camera* review provides protection to Defendants from a blanket termination of privilege, while finally providing transparency to the Plaintiffs on the SCANA Defendants' continued withholding tactics.

[3] For example, the SCANA Defendants continue to withhold documents created or submitted to the Dispute Resolution Board. Defendant Santee Cooper has turned over these documents, which were submitted to a third-party in a non-binding, non-confidential, non-judicial setting, . Any claim of privilege that may have existed over these documents has been waived.

II. EVEN WHERE LEGITIAMTE PRIVILEGE EXISTS, *IN CAMERA* REVIEW IS APPROPRIATE TO DETERMINE WHETHER THE CRIME-FRAUD EXCEPTION COMPELS DISCLOSURE OF THE DOCUMENTS

In *United States v. Zolin*, 491 U.S. 554, 109 S.Ct. 2619, 105 L.Ed.2d 469 (1989), the Supreme Court explained the purpose of the crime-fraud exception to the attorney-client privilege: "to assure that the 'seal of secrecy,' between lawyer and client does not extend to communications 'made for the purpose of getting advice for the commission of a fraud' or crime." Id. at 563, 109 S.Ct. at 2626 (quoting *Clark v. United States*, 289 U.S. 1, 15, 53 S.Ct. 465, 469, 77 L.Ed. 993 (1933) and *O'Rourke v. Darbishire*, [1920] A.C. 581, 604 (P.C.)). "[P]rivilege may be overcome, not only where fraud or crime is involved, but also where there are other substantial abuses of the attorney-client relationship"); *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985) ("crime, fraud or other misconduct"); *United States v. AT&T*, 86 F.R.D. 603, 624-25 (D.D.C. 1979) ("crime, fraud or tort"); *Cooksey v. Hilton International Co.*, 863 F.Supp. 150, 151 (S.D.N.Y. 1994) ("intentional torts moored in fraud"); *Volcanic Gardens Management Co. v. Paxson*, 847 S.W.2d 343, 347 (Tex. App. 1993) ("fraud" is "much broader" than common law or criminal fraud and can include "false suggestions" and "suppression of truth"). *See also Central Construction Co. v. Home Indemnity Co.*, 794 P.2d 595, 598 (Alaska 1990) ("Acts constituting fraud are as broad and as varied as the human mind can invent. Deception and deceit in any form universally connote fraud. Public policy demands that the 'fraud' exception to the attorney-client privilege [...] be given the broadest interpretation"). The principles governing the crime-fraud exception to the attorney-client privilege are equally applicable to the work product doctrine. See *In re Grand Jury Proceedings*, 102 F.3d 748, 751 (4th Cir. 1996); see also *In re International Systems and Controls*, 693 F.2d at 1242 ("When the case being prepared involves the client's ongoing fraud [...] we see no reason to afford the client the benefit of the [work product] doctrine. It is only the 'rightful

interests' of the client that the work product doctrine was designed to protect") (emphasis added).

During his deposition, former Santee Cooper and SCE&G employee Kenneth Brown testified that he was forced by counsel for SCE&G to file testimony with the South Carolina Public Service Commission despite knowledge that the testimony was false. In her testimony before the Public Service Commission, SCE&G's former vice president of finance, Carlette Walker, testified she was also forced by Counsel to file false testimony. Whether the SCANA Defendants intentionally withheld "potentially decisive" information from the Public Service Commission, especially about the projected cost of the Project, is exactly the type of fraudulent conduct the Court must consider in applying the crime-fraud exception.

The South Carolina Supreme Court has recognized that the attorney client privilege "does not extend to communications in furtherance of **criminal tortious or fraudulent conduct**." *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 384, 453 S.E.2d 880, 884–85 (1994) (emphasis added). *See also In re Grand Jury Proceedings & 5 Empanelled*, 401 F.3d 247, 251 (4th Cir. 2005); see *In re Grand Jury Subpoena*, 419 F.3d 329, 355 (5th Cir. 2005), quoting *United States v. Edwards*, 303 F.3d 606, 618 (5th Cir. 2002) ("Under the crime fraud exception to the attorney-client privilege, the privilege can be overcome when communication or work product is intended to further continuing or future criminal or fraudulent activity."). The published findings of the PSC establish a clear *prima facie* case of fraudulent conduct by SCANA. Having established *prima facie* evidence of fraud, "the burden of persuasion then shifts to the party asserting the privilege to give a reasonable explanation of the conduct or communication." *American Tobacco Co. v. State*, 697 So. 2d 1249 (Fla. Dist. Ct. App. 1997).

In addition to testimony before the Public Service Commission, during recent depositions in this case, several of the SCANA Defendants' key executives have invoked their 5th Amendment rights against self-incrimination over a myriad of topics including previous testimony under oath

about the Project, and Project disclosures. Documents addressing these same topics are included on the Unified Privilege Log. The use of counsel to shield criminal, tortious or fraudulent conduct is the very evil the crime-fraud exception was designed to address. In view of the facts of this case, production of documents *in camera* to ascertain whether the documents were in furtherance of some criminal, tortious or fraudulent scheme is appropriate.

CONCLUSION

As set forth herein, *in camera* review of the remaining documents on the SCANA Defendants' Unified Privilege Log is the only remaining option to address the SCANA Defendants' continued failures to produce non-privileged documents. Plaintiffs thus ask this Court to direct the SCANA Defendants to produce every document from their Unified Privilege log to this Court for *in camera* review. In addition, Plaintiffs would ask for the costs attributable to this motion, and any subsequent review of documents, to be borne by the SCANA Defendants. Plaintiffs have consulted with Defendants prior to filing this motion, and hereby certify compliance with Rule 11, SCRCP. This motion will be supported by any and all arguments, memoranda, or supplemental information as may be necessary, and as this Court may require. Respectfully submitted,

This 3rd day of February, 2020.

s/ Jessica L. Fickling
J. Preston Strom, Jr. (SC Bar #5400)
Jessica L. Fickling (SC Bar #100161)
STROM LAW FIRM, LLC
2110 Beltline Boulevard
Columbia, SC 29204
Telephone: 803.252.4800
Facsimile: 803.252.4801
petestrom@stromlaw.com
jfickling@stromlaw.com

Clayton B. McCullough (SC Bar #13722)
Ross A. Appel (SC Bar #79149)
McCULLOUGH KHAN, LLC
359 King St., Ste. 200
Charleston, SC 29401
Telephone: 843.937.0400
Facsimile: 843.937.0706
clay@mklawsc.com
ross@mklawsc.com

James L. Ward, Jr. (SC Bar #13453)
Ranee Saunders (SC Bar #100073)
Whitney Harrison (SC Bar #100111)
McGOWAN, HOOD & FELDER, LLC
321 Wingo Way, Suite 103
Mt. Pleasant, SC 29464
Telephone: 843.388.7202
Facsimile: 843.388.3194
jward@mcgowanhood.com
rsaunders@mcgowanhood.com
wharrison@mcgownhood.com

Daniel A. Speights (SC Bar #5207)
A. Gibson Solomons, III (SC Bar #68291)
SPEIGHTS & SOLOMONS, LLC
100 Oak Street, East
Hampton, SC 29924
Telephone: 803.943.4444
Facsimile: 803.943.4599
dspeights@speightsandsolomons.com
gsolomons@speightsandsolomons.com

Terry E. Richardson, Jr. (SC Bar #4721)
Edward J. Westbrook (SC Bar #6040)
Jerry H. Evans (SC Bar #11658)
Daniel S. Haltiwanger (SC Bar #15705)
RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
P.O. Box 1368
Barnwell, SC 29812
Telephone: 803.541.7850
Facsimile: 803.541.9625
trichardson@rpwb.com
ewestbrook@rpwb.com
dhaltiwanger@rpwb.com

Gregory M. Galvin (SC Bar #73988)
GALVIN LAW GROUP, LLC
P.O. Box 887
Bluffton, SC 29910
Telephone: 843.227.2231
Facsimile: 843.362.0714
Ggalvin@galvinlawgroup.com

Vincent A. Sheheen (SC Bar #11552)
SAVAGE ROYALL & SHEHEEN, L.L.P.
P.O. Drawer 10
Camden, SC 29021
Telephone: 803.432.4391
vsheheen@thesavagefirm.com

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NO. 2019-CP-23-06675
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	**PLAINTIFFS' REPLY TO THE SCANA DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL DOCUMENTS AND FOR *IN CAMERA* REVIEW**

In response to the SCANA Defendants' Memorandum in Opposition to Plaintiffs' February 3, 2020 Motion for *In Camera* Review, Plaintiffs file this reply to briefly clarify for the Court the requests Plaintiffs made of the SCANA Defendants following the November, 2019 hearing, the effort Plaintiffs undertook to avoid this motion, and the SCANA Defendants' failures in responding. The issues before this Court have been briefed multiple times before multiple judges. The parties have engaged in copious conferrals over the status of documents on the SCANA Defendants' privilege logs. They have been before a special master for oral argument. That same special master issued his Report & Recommendation, which was adopted by this Court in large part. This Court has enunciated her expectations with respect to the SCANA Defendants' conduct in ongoing discovery.

However, after this Court directed the SCANA Defendants and the Santee Defendants to unify and amend their multiple logs, and to produce documents in light of Judge Kimball's Report & Recommendation, the SCANA Defendants produced a log and over 14,000 documents, which bore different reference ranges from previous designations. Plaintiffs requested an explanation as to the re-numbering, and expressly requested that the SCANA Defendants cease re-numbering, but were told that to do so would require more time than the Defendants had.[1] Plaintiffs asked the SCANA Defendants to provide file names or document titles for any document on their log that was not an email. They failed to do so. Finally, the SCANA Defendants have failed to withdraw their designations over categories of documents identified by Judge Kimball as not subject to privilege, instead insisting that the parties continue to engage in document by document review.

[1] Notably, the Santee Defendants in their similar efforts did not need to change the Bates numbers identifying their documents. The Defendants' re-numbering unduly complicates Plaintiffs' review of previously withheld documents, making it extremely difficult to ascertain when and how often the document descriptions on the prior logs matched the documents.

In short, the problems underlying the SCANA Defendants' claims of privilege in this case persist.

In their memorandum in opposition to Plaintiffs' motion, the SCANA Defendants seek commendation for a massive document production, which coincided with their untimely removal to federal court. Defendants freely admit to producing an astounding 4,945 documents that were previously fully withheld as privileged. (Def. Memo in Opp. at 3) They admit to having changed the privilege designations on 6,564 documents, leaving just 1,469 remaining on their log. (*Id.*) These numbers alone, which the SCANA Defendants put forth as evidence of their cooperation, actually evidence the extent of their prior discovery abuse. But instead of filing a motion for sanctions, the Plaintiffs undertook an extensive review of the newly produced documents and corresponding log -- a fact the SCANA Defendants deny.

The SCANA Defendants concede they are still fully withholding 495 documents of the remaining 1,469 documents on their privilege log. From Plaintiffs' review of the fully withheld subset of entries on the log, it appears 358 documents, or 72%[2], are subject to challenge based upon well-established case law, and Judge Kimball's findings.[3] A full 25 documents on the log withheld in whole or in part pursuant to work product privilege were authored by management. In some instances, documents designated as work-product on the log were authored by an outside third-party consultant. And the SCANA Defendants freely admit in their memo that 85 documents on their log do not include any counsel whatsoever. (Def. Memo in Opp. at 8). The SCANA Defendants' continued withholding of facially challengeable documents is but one reason *in*

[2] Though the SCANA Defendants spurn Plaintiffs' statistics, the burden is on the withholding party to demonstrate application of privilege after a colorable facial challenge, which Plaintiffs have made. Rule 26(5)(A), SCRCP.

[3] These include, but are not limited to: (1) documents prepared by management or which do not include counsel; (2) documents relating primarily to business and/or financial matters in carrying out the construction project; (3) documents prepared for routine filings with and proceedings before regulatory bodies; (4) documents provided to the Dispute Resolution Board (DRB); (5) documents regarding reports by third-party consultants; and (6) documents prepared for disclosure to third parties.

camera review is now appropriate.

In addition to the SCANA Defendants' failures to cure the descriptions of documents they continue to withhold, the Defendants also continue to withhold documents representing private communications about publicly reported information. The issues relating to discrepancies between external reporting on the project and what was actually happening are well-documented in this case. Thus, project disclosures, and the conversations surrounding them, are crucial to fact-finding. The SCANA log contains 113 entries relating to disclosures, 31 entries that relate to the SCANA Defendants' responses to media inquiries, and 25 entries related to drafting press releases, some of which include no counsel. During conferral, the SCANA Defendants have maintained that if Plaintiffs could see the documents, they would understand the reason for the designation of privilege. But, of course, Plaintiffs have no way of knowing based on the information in the log itself whether any privilege applies.

In addition, a number of the SCANA Defendants' former executives have invoked their 5th Amendment rights against self-incrimination, and fact witnesses have testified in depositions that they were forced to lie before public regulatory bodies about the status of the project. A question therefore exists as to whether discussions that would otherwise have been subject to attorney-client privilege or work-product protection should be produced under the crime-fraud exception.

In short, compelling reasons exist for *in camera* review of the documents the SCANA Defendants continue to withhold or redact. South Carolina courts have always acknowledged that their primary obligation is to provide parties full, complete, and meaningful discovery to ensure an action is "decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001). Moreover, though ignored by the SCANA Defendants, the production of documents *in camera* does not obliterate privilege. Rather, it is an intermediary step whose intention is to protect privilege to the extent it exists.

Regardless of the SCANA Defendants' protestations, this Court is vested with full authority to provide the requested relief to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *Id.*

Respectfully submitted this 10th day of February,

s/ Jessica L. Fickling
J. Preston Strom, Jr. (SC Bar #5400)
Jessica L. Fickling (SC Bar #100161)
STROM LAW FIRM, LLC
2110 Beltline Boulevard
Columbia, SC 29204
Telephone: 803.252.4800
Facsimile: 803.252.4801
petestrom@stromlaw.com
jfickling@stromlaw.com

Clayton B. McCullough (SC Bar #13722)
Ross A. Appel (SC Bar #79149)
McCULLOUGH KHAN, LLC
359 King St., Ste. 200
Charleston, SC 29401
Telephone: 843.937.0400
Facsimile: 843.937.0706
clay@mklawsc.com
ross@mklawsc.com

James L. Ward, Jr. (SC Bar #13453)
Ranee Saunders (SC Bar #100073)
Whitney Harrison (SC Bar #100111)
McGOWAN, HOOD & FELDER, LLC
321 Wingo Way, Suite 103
Mt. Pleasant, SC 29464
Telephone: 843.388.7202
Facsimile: 843.388.3194
jward@mcgowanhood.com
rsaunders@mcgowanhood.com
wharrison@mcgownhood.com

Daniel A. Speights (SC Bar #5207)
A. Gibson Solomons, III (SC Bar #68291)
SPEIGHTS & SOLOMONS, LLC
100 Oak Street, East
Hampton, SC 29924
Telephone: 803.943.4444
Facsimile: 803.943.4599
dspeights@speightsandsolomons.com
gsolomons@speightsandsolomons.com

Terry E. Richardson, Jr. (SC Bar #4721)
Edward J. Westbrook (SC Bar #6040)
Jerry H. Evans (SC Bar #11658)
Daniel S. Haltiwanger (SC Bar #15705)
RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
P.O. Box 1368
Barnwell, SC 29812
Telephone: 803.541.7850
Facsimile: 803.541.9625
trichardson@rpwb.com
ewestbrook@rpwb.com
dhaltiwanger@rpwb.com

Gregory M. Galvin (SC Bar #73988)
GALVIN LAW GROUP, LLC
P.O. Box 887
Bluffton, SC 29910
Telephone: 843.227.2231
Facsimile: 843.362.0714
Ggalvin@galvinlawgroup.com

Vincent A. Sheheen (SC Bar #11552)
SAVAGE ROYALL & SHEHEEN, L.L.P.
P.O. Drawer 10
Camden, SC 29021
Telephone: 803.432.4391
vsheheen@thesavagefirm.com

ATTORNEYS FOR PLAINTIFFS

TIMELINE OF V.C. SUMMER PROJECT'S FAILURE

Feb. 12, 2004: The South Carolina General Assembly passes a bill that creates the Office of Regulatory Staff, which replaces the state consumer advocate in representing the interests of the public in utility rate cases.

April 19, 2007: The General Assembly passes the Base Load Review Act. The bill makes it easier for utilities to raise rates to pay for nuclear reactors while they are under construction and to charge ratepayers for their investments in plants that are not completed.

March 27, 2008: South Carolina Electric & Gas, a subsidiary of SCANA, applies to the Nuclear Regulatory Commission for a Combined Construction and Operating License to build two 1,100 MW AP1000 pressurized water reactors (Units 2 and 3) at the V.C. Summer Nuclear Generating Station.

May 27, 2008: SCE&G and Santee Cooper announce they have reached an engineering, procurement and construction contract with Toshiba-owned Westinghouse Electric Company. The reactors are originally projected to cost $9.8 billion.

May 30, 2008: SCE&G requests the Public Service Commission to approve the first rate increase associated with the nuclear project.

October 2008: The Office of Regulatory Staff recommends approval of the project, and the PSC allows SCE&G to begin site work.

February 2009: The PSC approves the expansion plan. According to the plan, construction is expected to start in 2012, Unit 2 is expected to begin operations in 2016, and Unit 3 is expected to begin operations in 2019.

December 31, 2011: SCE&G announces the first project delay, citing the need to redesign nuclear modules, as well as production and manpower issues.

March 2012: The NRC approves the construction license for the two proposed reactors. The reactors are now expected to begin operations in 2017 and 2018.

March 9, 2013: Construction of Unit 2 officially begins. It is the first reactor to start construction in the U.S. in 30 years.

November 2, 2013: Construction of Unit 3 officially begins.

October 2014: SCANA announces a one-year delay and extra project costs of $1.2 billion. The delay is attributed to the fabrication and delivery of structural modules. Expected completion is revised to late 2018/early 2019 for Unit 2, and a year later for Unit 3. The state Supreme Court rejects a legal challenge to the Base Load Review Act.

EXHIBIT 3

October 2015: SCE&G and Santee Cooper push back expected completion dates to 2019 and 2020.

February 2016: SCANA and Santee Cooper commission the Bechtel Report, which outlines Westinghouse failures and accuses the utilities of insufficient oversight.

June 2016: SCE&G asks the PSC to approve another rate increase. The increase is approved later that month.

July 2016: SCE&G requests the last of 9 rate hikes to fund the project. The Office of Regulatory Staff and S.C. Public Service Commission approve the increase, but also negotiate a settlement to keep SCE&G from raising its rates until the project is finished.

February 2017: SCANA announces Westinghouse provided SCE&G with revised in-service dates of April 2020 and December 2020 for Units 2 and 3, respectively. "The completion dates provided in the new schedule are within the 18-month contingency period provided under the construction provisions of the Base Load Review Act administered by the Public Service Commission of South Carolina," SCANA says.

March 2017: Westinghouse files for Chapter 11 bankruptcy, citing $9 billion in losses from its two U.S. nuclear construction projects, including the V.C. Summer expansion project.

July 31, 2017: SCANA and Santee Cooper announce they are abandoning the $9 billion project after Santee Cooper voted to cease all construction. Customers have paid $2 billion for the reactors as part of their monthly electric bills. Analysts estimate completing construction could have ultimately cost more than $23 billion.

August 1-15, 2017: SCE&G files for an abandonment petition on August 1. As part of the petition, the utility asks the PSC to allow it to charge ratepayers $4.9 billion it has spent on the abandoned project. The Office of Regulatory Staff files a motion to dismiss the petition on August 9, and SCE&G withdraws it on August 15 with the intent to refile at a later date.

August 22, 2017: A special state Senate committee holds its first hearing on the abandoned nuclear project. The next day, a House committee holds its first hearing.

September 4, 2017: Santee Cooper gives Governor Henry McMaster a copy of the 2016 Bechtel Report.

November 16, 2017: SCANA announces a 3.5 percent electric rate cut for SCE&G customers.

December 2017: Two cases are filed regarding the $27 monthly charge SCE&G customers still pay for the nuclear project. One asks the PSC to eliminate the ratepayer charge, and the second demands that SCE&G refunds customers the $2 billion they have already paid. SCE&G argues that the charge is necessary for the utility to remain solvent and files

motions to dismiss both cases. The PSC denies SCE&G's requests and orders the Office of Regulatory Staff to conduct an audit on the utility's rates.

January 3, 2018: Dominion Energy announces it will buy the embattled SCANA Corp. in a $14.6 billion deal that will include $1.3 billion in refunds to SCE&G utility customers (approximately $1,000 per customer). However, customers will still be charged higher electricity bills to pay off the debt for the project.

January 23, 2018: The S.C. House passes a proposal to strengthen the Office of Regulatory Staff and add a state consumer advocate for utility customers. "There wasn't any real advocacy on behalf of the public interest and the ratepayer," says state Rep. Peter McCoy, a sponsor of the proposal.

January 31, 2018: The S.C. House votes 119-1 to halt $37 million in monthly customer payments to SCANA. Under the terms of the agreement between the SCANA and Dominion Energy, Dominion could terminate the deal to purchase SCANA if the reactor payments from customers are stopped.

February 20, 2018: The S.C. Senate passes legislation that requires the PSC to delay its decision on SCANA's abandonment petition until December.

February 23, 2018: State electric cooperatives decide to sue Santee Cooper over ratepayer charges associated with the failed project.

March 7, 2018: The S.C. House votes for a second time to cut off the money SCANA bills its 700,000 customers for the abandoned nuclear expansion project. House lawmakers accuse the Senate's inaction of costing customers tens of millions of dollars since the House passed the first bill at the end of January. Senate lawmakers claim they are worried about bankrupting SCANA and harming the state's economy.

March 21, 2018: Dominion Energy and SCE&G submit documents to S.C. regulators indicating customers will pay an additional $3.8 billion for V.C. Summer nuclear project if Dominion buys SCANA. Approximately $1.8 billion would come from residential customers – amounting to $2,600 per household over the next two decades – and $2 billion would come from commercial customers.

April 18, 2018: The S.C. Senate agrees to temporarily cut SCE&G bills by 13 percent, as the S.C. House and governor battle over how much customers should continue to pay for the V.C. Summer project.

April 25, 2018: The S.C. House rejects the Senate's plan to cut SCE&G bills by 13 percent, demanding a larger, 18-percent rate cut.

May 10, 2018: The S.C. Senate votes to repeal the 2007 Base Load Review Act, which allowed SCE&G to charge utility customers for the reactors while they were under construction. The

Senate also votes to reinstate the office of consumer advocate, which gives customers an attorney that fights for them in rate hike cases.

June 2018: A state audit finds the final tab for the V.C. Summer project could increase by as much as $421 million due to sales tax and interest SCE&G and Santee Copper still owe on materials bought for the reactors. The utilities say they will challenge the audit's findings.

June 27, 2018: The S.C. House and Senate pass a proposal to temporarily cut SCE&G electric rates by almost 15 percent. The lawmakers also agree to delay deciding who is responsible for paying for the failed reactors until December.

June 29, 2018: SCE&G files a federal lawsuit in an attempt to block the S.C. PSC from enacting the rate cut mandated by lawmakers.

July 31, 2018: One year after SCANA abandoned the V.C. Summer project, its shareholders vote to merge the company with Dominion Energy.

August 6, 2018: U.S. District Court Judge Michelle Childs denies a motion from SCE&G to block the lawmaker-mandate rate cut.

August 7, 2018: The temporary 15 percent rate cut goes into effect. According to reports, average SCE&G residential customers should see their August electric bills decrease by more than $110 due to both the cut and a one-time credit for past electricity use.

September 4, 2018: The NRC approves the transfer of the licenses for the three reactors the V.C. Summer Nuclear Station, including the two unfinished units, to Dominion. With the last federal hurdle cleared, N.C. and S.C. state regulators now control the fate of the potential sale.

September 21, 2018: The U.S. Fourth Circuit Court of Appeals denies SCE&G's request for an injunction to halt the temporary rate cuts as well as the utility's request for an expedited appeal. However, the court also rejects a request from S.C. lawmakers to dismiss the appeal entirely. Thanks to the ruling, the rate cuts will remain in place until the S.C. PSC issues its ruling on SCE&G's longer-term rates in the fall.

October 19, 2018: SC Sen. Brad Hutto, D-Orangeburg, says at an energy conference that a state judge could rule the 2007 Base Load Review Act, which enabled the V.C. Summer Project, unconstitutional. Dominion Energy said it would walk away from the deal to buy SCANA if that happened.

October 25, 2018: Dominion files an alternate plan with S.C. regulators to buy SCANA that would lower customer bills but eliminate a previously proposed $1,000 customer refund. The plan would provide a total of $1.91 billion in refunds over 20 years rather than $1.3 billion in upfront refunds.

November 24, 2018: SCANA reaches a $2 billion settlement with customers who sued over their high electricity rates. As part of the settlement, SCE&G customers will also receive $115 million that had previously been intended for SCANA executives.

December 4, 2018: SC Circuit Court Judge John Hayes gives preliminary approval to SCANA's settlement with customers; however, the settlement is contingent on the PSC approving Dominion's offer to buy SCANA. The PSC must make a decision by December 21.

December 14, 2018: The South Carolina Public Service Commission voted to allow Dominion to purchase South Carolina Electric & Gas for $15 billion. Former SCE&G Vice President of nuclear finance administration Carlette L. Walker testified against SCE&G, accusing its leaders of dishonesty about the true cost of the nuclear project. The acquisition estimated to cut $22 off consumers' average monthly bill rather than refund each customer $1,000.

January 2, 2019: Dominion Energy finalized its purchase of SCE&G. Under Dominion's leadership, SCE&G will collect $2.3 billion from ratepayers over the next two decades.

April 29, 2019: SCE&G is rebranded under the name Dominion Energy South Carolina.

May 3, 2019: Dominion released its first earnings report since acquiring SCE&G, reporting a loss of $680 million for the January – March period. The report predicted the company would be profitable again in the second quarter.

July 31, 2019: South Carolina Senator Larry Grooms and Santee Cooper's top attorney, Michael Baxley, took the state plane to Washington, D.C. to meet with White House officials. Grooms and a spokesperson explained this meeting was for "economic development," but declined to specify if they discussed the V.C. Summer plant during the appointment.

August 28, 2019: New Santee Cooper CEO Mark Bonsall reports the utility has entered discussions with outside parties interested in finishing the nuclear project. The interested parties include South Korea's state-run power company, Korea Electric Power Corporation. Bonsall insists Santee Cooper will not invest any more money in the project.

November 9, 2019: Reports emerge revealing Dominion Energy shut down the V.C. Summer plant following a "small leak" in the plant's coolant system. Spokesperson Rhonda O'Banion assured the community that there is no danger amidst concerns that news of the leak was being withheld from the public. Dominion Energy did not announce how long the plant would remain shut down.

February 25, 2020: The NRC reveals two contract workers at the V.C. Summer nuclear plant falsified fire safety check records. The NRC issued Dominion Energy Level 4 violation – the least serious of four violation levels the NRC uses to document nuclear plant issues.

Source: Alex Cross, The Failed V.C. Summer Nuclear Project: A Timeline, Dec. 4, 2018, *available at* https://www.chooseenergy.com/news/article/failed-v-c-summer-nuclear-project-timeline/, last visited March 20, 2020.

	Motion	Filed By	File Date
1	Motion for Protective Order	SCE&G	10/11/2017
2	Motion to Dismiss	SCE&G	10/11/2017
3	Motion to Dismiss	Santee Cooper	10/24/2017
4	Motion for Default Judgment	Plaintiff	11/1/2017
5	Motion to Dismiss	Central	11/16/2017
6	Motion to Stay	Santee Cooper	2/2/2018
7	Motion for Class Cert	Plaintiff	2/16/2018
8	Motion to Dismiss	Palmetto Elec. Coop.	2/23/2018
9	Motion to Enforce Stay Pending Appeal	SCE&G	3/7/2018
10	Motion to Amend	Plaintiff	3/19/2018
11	Motion to Dismiss	SCE&G	4/20/2018
12	Motion to Dismiss	Santee Cooper	4/26/2018
13	Motion for PHV	Central	5/15/2018
14	Motion to Deposit Money Under R. 67	Central	5/22/2018
15	Motion to Compel	Santee Cooper	5/30/2018
16	Motion for Leave to File Amicus Brief	SC Atty. General	6/8/2018
17	Amended Motion to Dismiss 4th Am. Comp.	Santee Cooper	7/9/2018
18	Motion to Stay Pending SC Supreme Ct. Determination of Petition for Orig. Juris	Santee Cooper	7/12/2018
19	Amended Motion to Dismiss Central's Cross-Claims	Santee Cooper	7/13/2018
20	Motion to Dismiss Palmetto Elec. Coop. Cross-Claims	SCE&G	7/19/2018
21	Motion to Dismiss Palmetto Elec. Coop. Cross-Claims	Santee Cooper	8/1/2018
22	Motion for Protective Order	Santee Cooper	11/9/2018
23	Motion to Compel Santee Cooper	Plaintiff	1/10/2019
24	Motion to Dismiss Santee Cooper Cross-Claims or to Compel Arbitration	SCE&G	1/31/2019
25	Motion for Confidentiality Order	Central	2/1/2019
26	Motion for Protective Order re: Subpoena to Deloitte, PwC, Secretariat	SCE&G	3/1/2019
27	Motion to Compel	Plaintiff	3/6/2019
28	Motion for Confidentiality Order	Central	3/7/2019
29	Motion to Compel	Santee Cooper	3/15/2019
30	Motion for PHV	SCE&G	3/26/2019
31	Motion for PHV	Central	4/2/2019
32	Motion for Leave to File Amended Cross-Claim	Central	4/26/2019
33	Motion to Amend Pleadings	Santee Cooper	4/26/2019
34	Motion for Leave to File Amended Complaint	Plaintiff	4/26/2019
35	Motion to Quash Subpoena	Scott Madden	4/29/2019

EXHIBIT 4

36	Motion to Compel	Santee Cooper	5/2/2019
37	Motion to Compel Santee Cooper Docs	Plaintiff	5/7/2019
38	Priority Motion to Compel	Plaintiff	5/7/2019
39	Priority Motion to Compel	Plaintiff	5/9/2019
40	Motion for Summary Judgment	Plaintiff	5/17/2019
41	Motion to Compel	Santee Cooper	5/30/2019
42	Motion to Compel	Plaintiff	6/3/2019
43	Motion for PHV	Santee Cooper	6/18/2019
44	Motion for Protective Order re: 30(b)(6) Depositions	Santee Cooper	6/24/2019
45	Motion for Extend Scheduling Order Deadlines	Santee Cooper	8/5/2019
46	Motion to Compel	Plaintiff	8/9/2019
47	Motion for Protective Order	Central	8/13/2019
48	Motion to Transfer Venue	Santee Cooper	8/16/2018
49	Motion for Speedy Hearing	Santee Cooper	8/16/2018
50	Motion to Strike Santee Cooper 3rd Party Complaint	Central	8/23/2019
51	Motion to Dismiss Palmetto Cross-Claims	SCE&G	9/12/2019
52	Motion to Dismiss	SCE&G	9/20/2019
53	Motion to Compel	Plaintiff	10/1/2019
54	Motion to Sever and Stay Central's Claims	Santee Cooper	10/1/2019
55	Motion to Change Venue	SCE&G	10/4/2019
56	Motion for Protective Order	Jimmy Addison	10/29/2019
57	Motion for Protective Order	SCE&G	10/30/2019
58	Motion for Specific Performance	Santee Cooper	10/31/2019
59	Motion to Compel	SCE&G	11/1/2019
60	Motion for Ruling on Objections to Form	Plaintiff	11/8/2019
61	Motion for Protective Order	Jimmy Addison	11/8/2019
62	Motion to Reconsider Transfer of Venue	Plaintiff	11/15/2019
63	Motion to Approve Form and Notice Plan	Plaintiff	11/19/2019
64	Motion to Strike Future Damages	Santee Cooper	1/22/2020
65	Motion to Decertify Class	Santee Cooper	1/28/2020
66	Motion to Modify Order Approving Notice	Plaintiff	1/28/2020
67	Motion to Strike Future Damages	SCE&G	1/28/2020
68	Motion to Enforce Statutory Limits	Santee Cooper	2/3/2020
69	Motion to Compel	Plaintiff	2/3/2020
70	Motion for Protective Order	Steve Byrne	2/24/2020
71	Motion for Preliminary Approval	Plaintiff	3/6/2020

*Consent Motion to Withdraw as Counsel for SCE&G filed on 2/22/2019 not included.

DATE	DEPONENT	LOCATION	REQUESTOR	STATUS
5/1/2019	Santee Cooper re Toshiba settlement	Speights & Solomon Hampton, SC, 10 am	Plaintiffs	
5/24/2019	Santee Cooper re EPC	Speights & Solomon Hampton, SC, 10 am	Plaintiffs	To be reconvened
5/28/2019	Leighton Lord	Nelson Mullins Columbia, SC 9:30 am	Plaintiffs	To be reconvened
6/13/2019	Jason Williams	Nelson Mullins Columbia, SC 10:00 am	Plaintiffs	
6/14/2019	Charlie Condon	Nelson Mullins Charleston, SC 9:30 am	Plaintiffs	
6/19/2019	Dan Ray	Nelson Mullins Columbia, SC 9:30 am	Plaintiffs	
6/20/2019	Michael Crosby	Nelson Mullins Columbia, SC 9:30 am	Plaintiffs	
7/15/2019	Lonnie Carter	Nelson Mullins Charleston, SC 9:30 am	Plaintiffs	To be reconvened
7/22/2019	Rob Hochstetler	Nelson Mullins Columbia, SC 9:30 am	Santee Cooper	
7/24/2019	Ronald Calcaterra	Nelson Mullins Columbia, SC 10 am	Santee Cooper	
7/25/2019	Greg McCormack	Nelson Mullins Charleston, SC 10 am	Plaintiffs	
7/30/2019	Lou Green	Nelson Mullins Columbia, SC 9:30 am	Santee Cooper	
8/6/2019	John Frick	Nelson Mullins Columbia, SC 10 am	Santee Cooper	
8/7/2019	Chris Kolbe	Richardson, Plowden Myrtle Beach, 10 am	SCE&G/SCANA	
8/7/2019	Ron Jones	Nelson Mullins, Myrtle Beach 9 am	Santee Cooper	
8/19/2019	Jessica Cook	Speights & Solomon Hampton, SC, 11 am	SCE&G/SCANA	
9/10/2019	Michael Crosby	Nelson Mullins Columbia, SC 9:30 am	Plaintiffs	
9/13/2019	John Tiencken	Nelson Mullins Columbia, SC 10 am	Santee Cooper	
9/19/2019	Dr. John O'Brien	Nelson Mullins Jacksonville, FL, 9 am	Defendants	

EXHIBIT 5

9/19/2019	Bill McCall	Nelson Mullins Columbia, SC , 9:30 am	Plaintiffs	
9/20/2019	Eileen Wallace	Nelson Mullins Columbia, 10 am	Plaintiffs	
9/24/2019	Jeff Archie	Nelson Mullins Charleston, SC 10 am	Santee Cooper	
9/24/2019	Jim Lamb	Nelson Mullins Columbia, SC 10 am	Santee Cooper	
9/25/2019	Mark Svrcek	Nelson Mullins Columbia, SC 10 am	Santee Cooper	
10/3/2019	Philip Moor	Nelson Mullins Charleston, SC 9 am	Defendants	
10/4/2019	Mike Couick	Nelson Mullins Columbia 9:30 am	SCE&G/SCANA	
10/29/2019	Leighton Lord	Nelson Mullins Columbia SC 9:30 am	Plaintiffs	
11/1/2019	Kimberly Heath	Richardson, Plowden Barnwell, 10 am	Santee Cooper	
11/4/2019	Jimmy Addison	Nelson Mullins Charleston, SC 10 am	Santee Cooper	
11/21/2019	Kevin Marsh	Nelson Mullins Columbia, SC 9:30 am	Plaintiffs	
12/2/2019	Mike Couick	Nelson Mullins Columbia, SC 10 am	SCE&G/SCANA	POSTPONED
12/3/2019	Jack Wolf	Nelson Mullins Charleston, SC 9:30 am	SCE&G/SCANA	
12/4/2019	Lonnie Carter	Nelson Mullins Charleston, SC 9 am	SCE&G/SCANA	
12/6/2019	30(b)(6) Cherry Bakaert	Moore Taylor Thomas Columbia, SC 10 am	Plaintiffs	POSTPONED
12/13/2019	Ellie Thomas	Nelson Mullins Charleston, SC 9:30 am	Defendants	
12/16/2019	Mark Cannon	Nelson Mullins Charleston, SC 10 am	Plaintiffs	POSTPONED
12/17/2019	Ron Jones, as 30(b)(6) SCANA Construction Topics	Nelson Mullins, Myrtle Beach 9 am	Plaintiffs	POSTPONED
12/18/2019	William Finn	Nelson Mullins Charleston, SC 10 am	SCE&G/SCANA	

12/19/2019	Mike Baxley	Nelson Mullins Charleston, SC 10 am	SCE&G/SCANA	
2/13/2020	John Heneage	Nelson Mullins Columbia SC 9:00 am	Defendants	
2/10/2020	Aiken Elec. Coop	Nelson Mullins Columbia, SC 2:00 PM	Santee Cooper	
2/10/2020	Gary Stooksbury	Nelson Mullins Columbia, SC 2:00 PM	Santee Cooper	
2/13/2020	Dr. Wolfe	Nelson Mullins Columbia, SC 9:30 AM	SCE&G/SCANA	
2/14/2020	John Heneage	Nelson Mullins Columbia, SC 9:00 AM	SCE&G/SCANA	
2/17/2020	Steve Byrne VIDEO	Nelson Mullins Charleston, SC 9:30 am	Plaintiffs	
2/21/2020	Berkley Elec. Coop 30 (b)(6)	Nelson Mullins Columbia, SC 10 PM	Santee Cooper	
2/21/2020	Dwayne Cartwright	Nelson Mullins Columbia, SC 10 AM	Santee Cooper	
2/22/2020	Alan Torres	Toronto	Plaintiffs	
2/24/2020	Mid-Carolina Coop 30(b)(6)	Nelson Mullins Columbia, SC 10 AM	Santee Cooper	
2/24/2020	Bob Pauling	Nelson Mullins Columbia, SC 10 AM	Santee Cooper	
2/27/2020	Ken Petrunik	Atlanta	Plaintiffs	
3/19/2020	Glenn Hubbard	NYC	Plaintiffs	
5/30/2019	Jeff Armfield	Nelson Mullins Charleston, SC 9:30 am	Plaintiffs	
TBD	Santee Cooper re IT and Doc Retention	TBD, 10 am	Central	
TBD	John Brantley	Nelson Mullins Columbia, SC 9:30 am	Santee Cooper	
TBD	Cal Land	Nelson Mullins Columbia, SC 9:30 am	Plaintiffs	
TBD	Nan Cline	Nelson Mullins Charleston, SC 10 am	Plaintiffs	
TBD	Corrin F. Bowers & Son		SCE&G/SCANA	Date requested
TBD	Cyril B. Rush, Jr.		SCE&G/SCANA	Date requested
TBD	Bobby Bostick		SCE&G/SCANA	Date requested
TBD	Kyle Cook		SCE&G/SCANA	Date requested
TBD	Donna Jenkins		SCE&G/SCANA	Date requested

TBD	Ruth Ann Keffer		SCE&G/SCANA	Date requested
TBD	Lynn Miller		Santee Cooper	Date requested
TBD	Maceo Sloan		Santee Cooper	Date requested
	Blue Ridge Elec. Coop		Santee Cooper	To be confirmed
	Broad River Elec. Coop		Santee Cooper	To be confirmed
	Coastal Elec. Coop.		Santee Cooper	To be confirmed
	Edisto Elec. Coop.		Santee Cooper	To be confirmed
	Horry Co. Elec. Coop.		Santee Cooper	To be confirmed
	Laurens Elec. Coop.		Santee Cooper	To be confirmed
	Little River Elec. Coop.		Santee Cooper	To be confirmed
	Lynches River Elec. Coop.		Santee Cooper	To be confirmed
	Pee Dee Elec. Coop.		Santee Cooper	To be confirmed
	Santee Elec. Coop.		Santee Cooper	To be confirmed
	Tri-County Elec. Coop.		Santee Cooper	To be confirmed
	York Elec. Coop.		Santee Cooper	To be confirmed
	SCANA 30(b)(5)(6)		Santee Cooper	To be confirmed

COOK v. SANTEE COOPER, ET AL,
C/A: 2017-CP-25-00348; 2019-CP-23-00675
HEARING SCHEDULE

DATE	HEARING/NOTES
2017-11-20	Initial Status Conference with the Court on V.C. Summer Customer Cases; scheduled hearing on Defendants SCE&G's Omnibus Motion to Dismiss
2018-01-08	Defendant SCE&G's Omnibus Motion to Dismiss with certain determinations to be imputed to *Cook*
2018-03-07	SCE&G's Motion to Stay pending Appeal of the Court's denial of the Omnibus Motion to Dismiss
2018-07-25	Central Electric Co-op's Motion under Rule 67, SCRCP to Pay into the Court Amounts Owed to Santee Cooper; Santee Cooper's Motion to Stay; originally scheduled Santee's Motion to Dismiss Plaintiffs' 4th Amended Complaint and Motion to Dismiss Central's Cross-Claims (held over)
2018-09-20	Santee's Amended Motion to Dismiss Plaintiffs' 4th Amended Complaint; Santee's Amended Motion to Dismiss Central's Cross-Claims; Santee's Motion to Dismiss Palmetto's Cross Claims; SCE&G's Motion to Dismiss Plaintiffs' 4th Amended Complaint; SCE&G's Motion to Dismiss Palmetto's Cross Claims
2019-07-17	Plaintiffs' Motion to Compel Common Legal Interest Documents pursuant to deposition testimony of Ken Browne; Plaintiffs' Motion to Compel Documents withheld pursuant to Regulatory Exception; Plaintiffs' Motion to file 5th Amended Complaint (all resolved pre-hearing)
2019-09-23	Hearing before Special Referee Judge Kimball to Compel Documents from Santee and SCE&G's privilege logs withheld on the basis of Common Legal Interest and/or Regulatory Exception; and to ascertain categorical privilege over a sample of documents
2019-10-08	Defendant Santee's Motion to Transfer Venue; Defendant Santee's Motion to Sever Contractual Claims of Central; Defendant Santee's Motion for Expedited Hearing on Declaratory Judgment Cause of Action; Defendant SCE&G's Motion to Compel Arbitration; Plaintiffs' Motion to Certify the Class
2019-11-12	Plaintiffs' Motion to Compel Documents Improperly withheld on Defendants' SCE&G and Santee Coopers' Consecutive Privilege Logs with report and recommendation by Judge Kimball; SCE&G's renewed Motion to Compel Arbitration
2020-01-30	Defendant Santee's Motion to Exclude Future Damages; Defendant Santee's Motion to Decertify Class; Plaintiffs' Motion to Alter or Amend the Order Certifying the Class; Scheduling Order with Date Certain Trial for April 20, 2020

Exh. 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-cv-60341-WPD

WILLIAM B. NEWTON and NOREEN ALLISON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DUKE ENERGY FLORIDA, LLC, a Florida limited liability company and FLORIDA POWER & LIGHT COMPANY, a Florida profit corporation,

Defendants.

_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

THIS CAUSE comes before the Court on Defendant Florida Power and Light Company's Motion to Dismiss Plaintiffs' Complaint [DE 23] and Defendant Duke Energy Florida, LLC's Motion to Dismiss [DE 24], both filed herein on May 5, 2016 (collectively, the "Motions"). The Court has carefully considered the Motions, Plaintiffs' Responses [DEs 31, 32], Defendants' Replies [DEs 37, 38], and is otherwise fully advised in the premises.

I. Background

This action was filed on February 22, 2016, by Lead Plaintiffs WILLIAM B. NEWTON AND NOREEN ALLISON ("Plaintiffs") against Defendants: (1) DUKE ENERGY FLORIDA, LLC. ("Duke"); and (2) FLORIDA POWER & LIGHT COMPANY ("FPL") (collectively, "Defendants"). There are two pending Motions to Dismiss [DEs 23, 24]—filed by FPL [DE 23], and Duke [DE 24]. The hearing for oral argument on both Motions [DEs 23, 24] was held on September 16, 2016.

The operative complaint is the Class Action Complaint [DE 1] (the "CAC"). Plaintiffs challenge the constitutionality of a Florida law, the Florida Renewable Energy Technologies and Energy Efficiency Act, 2006 Fla. Laws ch. 230.[1] [¶¶ 1–3].

Duke and FPL are the largest utility companies in Florida; they have a monopoly over their respective territories. *Id.* According to Plaintiffs, the Act requires customers of FPL and Duke to pay into a system, the "Nuclear Cost Recovery System ("NCRS"), to fund nuclear projects; if the nuclear projects are abandoned, the utilities keep the money and may collect more. *Id.* Customers have paid $2 billion on their electric bills to fund these nuclear projects, most of which will never generate any electricity or any other benefit for customers.[2] *Id.* The Act allows Florida utilities to pass costs related to nuclear development onto customers. [¶ 7]. Since November 12, 2008, customers have been paying to fund various nuclear power plant projects launched by Defendants; Duke abandoned all of its nuclear projects in 2013[3], and FPL's expansion of an existing plant is "bogged down in red tape." *Id.*

Under the NCRS, the Florida Public Service Commission ("FPSC"), a state agency charged with regulating electric utilities, issues a Determination of Need allowing a utility company to pass the cost of nuclear power plant construction onto its customers. [¶¶ 15–20]. The Act allows utility companies to collect these costs *before* the plants are completed, contrary to the ordinary practice where utilities add pre-construction and construction costs to their rate base *after* the new plant is completed. *Id.*

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[1] Fla Stat. §§ 366.93, 403.519(4)

[2] The costs included site selection and acquisition, licensing, pre-construction, construction, and carrying costs. [¶ 20].

[3] Duke purchased land for a nuclear power plant on November 12, 2008 at a cost of $55 million; Duke announced it was abandoning the plant on August 1, 2013; under the Nuclear Cost Recovery System, Duke can keep all the costs collected from customers and can collect additional costs that the FPSC determines as "prudent." [¶¶22–23].

The CAC contains four counts challenging the constitutionality of NCRS: (1) NCRS violates the dormant Commerce Clause[4]; (2) NCRS is preempted (under the Supremacy Clause) by the Atomic Energy Act of 1954 ("AEA"); (3) NCRS is preempted by the Energy Policy Act of 2005 ("EPACT"); and (iv) a derivative claim for unjust enrichment. [¶ 4]. Plaintiffs seek declaratory relief, injunctive relief, restitution, and damages. Through the instant Motions [DEs 23, 24], Defendants, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, seek dismissal of all counts.

II. Standard of Review

To adequately plead a claim for relief, Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating *Conley*, 355 U.S. at 41). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include any theory on which the plaintiff may recover. *See Linder v. Portocarrero*, 963 F. 2d 332, 334-36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F. 2d 43 (5th Cir. 1967)).

However, the court need not take allegations as true if they are merely "threadbare

[4] Plaintiffs allege that the Nuclear Cost Recovery System violates the dormant Commerce Clause by discriminating against out-of-state energy providers and by discriminating against in-state producers of non-nuclear energy. The Act favors nuclear providers by providing financial immunity to private utilities that seek to build nuclear power plants. [¶ 5].

recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 129 S. Ct. at 1949. In sum, "a district court weighing a motion to dismiss asks 'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" *Twombly*, 550 U.S. at n. 8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds, Davis v. Scherer*, 468 U.S. 183 (1984)).

III. Discussion

As a preliminary matter, the CAC is subject to dismissal on two separate grounds, which standing alone, would be sufficient to dismiss the entire CAC. First, the CAC is subject to dismissal for lack of state action. Second, the CAC is subject to dismissal for want of a private right of action. Furthermore—the individual counts of the complaint—Plaintiffs' dormant Commerce Clause claim, preemption claims, and claim for unjust enrichment, are subject to dismissal on four additional grounds. First, Plaintiffs lack standing to bring a claim under the dormant Commerce Clause. Second, NCRS is not preempted by AEA. Third, NCRS is not preempted by EPACT. Finally, the Court declines supplemental jurisdiction over the derivative state-law unjust enrichment claim.

A. The CAC is subject to dismissal on two separate and independent grounds.

The CAC is subject to dismissal on two separate grounds, either of which, standing alone, would be sufficient to dismiss the CAC. First, the CAC is subject to dismissal for lack of state action. Second, the CAC is subject to dismissal for want of a private right of action.

1. The CAC is subject to dismissal for lack of state action.

Plaintiffs cannot challenge the constitutionality of a state statute by bringing suit against a private actor; such a law suit can only be brought against state actors. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Generally, constitutional challenges to state laws require

state action. *See id.*; *Abner v. Mobile Infirmary Hosp.*, 149 Fed. App'x 857, 859 (11th Cir. 2005) ("[T]he Constitution only protects against injuries caused by state actors."). Since Defendants are private entities and there is no state action, Duke seeks dismissal of Plaintiffs' constitutional claims against them. The Court notes that regulation of Defendants by the FPSC does not convert their business into state action. *See Carlin Commc'n v. S. Bell Tel. & Tell. Co.*, 802 F.2d 1352, 1361 (11th Cir. 1986) ("[T]he mere approval by the PSC of a business practice of a regulated utility does not transmute a practice initiated by the utility into state action."); *accord Blankenship v. Gulf Power Co.*, 551 Fed. App'x 468, 471 (11th Cir. 2013).

Plaintiffs argue that Defendants are the proper parties in this action. Plaintiffs state that under Florida law, the State need not be joined to the action in order to pursue a constitutional challenge to state statutes. Plaintiffs characterize this issue as merely procedural—a failure to join the State Attorney General as a necessary party. Duke asserts that the substance of the relief requested by Plaintiffs—the striking down of a State statute, or a declaration to that effect—cannot be ordered against a private entity.

Since Plaintiffs' constitutional claims are not asserted against a state actor, the constitutional claims are dismissed for failure to state a claim. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) ("[S]tate action requires both an alleged constitutional deprivation caused by the State . . . , and that the party charged with the deprivation must be a person who may fairly be said to be a state actor."). Since the unjust enrichment claim is derivative of the constitutional claims, it is also dismissed. The lack of state action provides independent grounds for dismissing the CAC; however, the Court has addressed a second ground for dismissal of the CAC—lack of a private right of action.

2. The CAC is subject to dismissal for want of a private right of action.

In order for the Court to declare a state statute unconstitutional, a plaintiff must have a right to sue for that relief. *See Armstrong v. Exceptional Child Ctr.*, 135 S. Ct. 1378, 1383 (2015). The "question whether a plaintiff states a claim for relief 'goes to the merits.'" *Bond v. United States*, 564 U.S. 211, 219 (2011). Plaintiff must assert more than having a right that was violated; plaintiff must have a legally sufficient vehicle (a right of action, a cause of action, or a claim for relief) through which to pursue that right in court. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002). A plaintiff may pursue affirmative preemption claims and challenges to the Commerce Clause only when Congress provides a right of action. *See Armstrong*, 135 S. Ct. at 1384; *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("[P]rivate rights of action to enforce federal law must be created by Congress.").

Regarding the preemption claims, there is no private right of action under the Supremacy Clause, the AEA, or EPACT. Similarly, there is no private right of action under the Commerce Clause. Plaintiffs argue that The Declaratory Judgment Act ("DJA") provides a ground for the Court to hear the preemption claims and the dormant Commerce Clause claim, regardless of the absence of private right of action. The Court finds that the DJA cannot substitute for a private right of action. Accordingly, the preemption claims and dormant Commerce Clause claim must be dismissed.

i. Preemption Claims: there is no private right of action under the Supremacy Clause, the AEA, or EPACT.

The Supremacy Clause is a "rule of decision" that "certainly does not create a cause of action." *Armstrong*, 135 S. Ct. at 1383. Therefore, the only source for a preemption claim is in the statutes alleged to be preempted. *See id.* at 1385–87. Congress creates a private right of

action only when it uses "rights-creating language" in the statute. *Sandoval*, 532 U.S. at 288. AEA and EPACT do not contain such language, so they are not privately enforceable. In *Liesen v. La. Power & Light Co*, the Court found no private right of action under AEA. 636 F.2d 94, 95 (5th Cir. Feb. 2, 1981).[5] Only judicial enforcement by the Attorney General is permitted. Atomic Energy Act of 1954, 42 U.S.C. § 2271(c) (2012). EPACT is also not privately enforceable according to *Blankenship v. Gulf Power Co.*, No. 12-0266, 2014 WL 83889, at *3 (N.D. Fla. Jan 9, 2014). Since the AEA and EPACT do not contain a private right of action, and the Supremacy Clause does not provide a private right of action, Plaintiffs' preemption claims must be dismissed.

ii. Dormant Commerce Clause claim: there is no private right of action under the Commerce Clause.

Regarding the dormant Commerce Clause claim, the Commerce Clause also does not independently convey a private right of action. Private litigants can only bring Commerce Clause claims under 42 U.S.C. § 1983 because Congress expressly created a private right of action in that statute. *Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 683 (2003) (citing *Gonzaga Univ.*, 536 U.S. at 283) ("When Congress wishes to allow private parties to sue to enforce federal law, it must clearly express this intent. Under this Court's precedents, private parties may employ 42 U.S.C. § 1983 or an implied private right of action only if they demonstrate an 'unambiguously conferred right.'"). However, Plaintiffs cannot assert a Section 1983 claim for alleged Commerce Clause violations because the Defendants are not state actors.

iii. The DJA is not a substitute for a private right of action.

In response, Plaintiffs claim that the DJA is the source of their claims. Plaintiffs argue that Duke mischaracterizes the CAC by claiming that it seeks to enforce the Commerce Clause,

[5] Fifth Circuit decisions issued prior to October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

AEA, and EPACT against Defendants. Instead, they construe their claims as seeking: declaratory judgment that NCRS is invalid under the dormant Commerce Clause or the Supremacy Clause; injunction of the unconstitutional statute; and recovery of fees wrongfully collected under an unconstitutional law. Plaintiffs aver that the DJA creates a federal cause of action permitting "any court of the United States, upon the filing of an appropriate pleading, . . . [to] declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." The declaratory Judgment Act, 28 U.S.C. § 2201(a) (2012).

It is now well settled that "The [DJA] is neither an extension of federal jurisdiction nor an end-run around constitutionally prohibited advisory opinions." *Bacardi USA, Inc. v. Young's Mkt. Co.*, No. 16-CV-20070-PAS, 2016 WL 3087060, at *4–5 (S.D. Fla. May 31, 2016). Declaratory relief presupposes the availability of a judicially remediable right. *Schilling v. Rogers*, 363 U.S. 666, 677 (1960); *accord Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 902 (6th Cir. 2014) ("The point of the [DJA] is to create a remedy for a preexisting right enforceable in federal court."); *Alberto San, Inc. v. Consejo De Titulares Del Condominio San Alberto*, 522 F.3d 1, 5 (1st Cir. 2008). In addition, relief under DJA is discretionary. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 136-37. This "substantial" discretion is exercised in light of the DJA's purpose as well as equitable, prudential, and policy grounds. *Id.*; *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286-88 (1995).

AEA, EPACT, and the Supremacy Clause do not provide a private right of action, and without a preexisting right enforceable in this Court, Plaintiffs' claims cannot be brought under the DJA. Accordingly, the Court dismisses Plaintiffs' constitutional claims for want of a private right of action, finding that the DJA does not provide Plaintiffs with an avenue for relief under the applicable statutes and constitutional provisions.

B. Additional grounds for dismissal of individual counts

Lack of state action and lack of a private right of action are two independently sufficient grounds for dismissal of the CAC. Additionally, the Court finds dismissal of the individual counts appropriate for the following reasons: first, Plaintiffs lack standing to bring a claim under the dormant Commerce Clause; second, NCRS is not preempted by AEA; third, NCRS is not preempted by EPACT; and finally, the Court declines supplemental jurisdiction over the derivative state-law unjust enrichment claim.

1. Plaintiffs lack standing to bring a claim under the dormant Commerce Clause.

Whether a plaintiff has standing "involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise." *Bennett,* 520 U.S. at 162 (quoting *Warth v. Seldin,* 422 U.S. 490, 498 (1975)). Prudential standing involves "judicially self-imposed limits on the exercise of federal jurisdiction," *Allen v. Wright*, 468 U.S. 737, 751 (1984), that are "founded in concern about the proper—and properly limited—role of the courts in a democratic society," *Warth*, 422 U.S., at 498.

Prudential standing requires that "[i] the plaintiff asserts his own rights and not the rights of others, [ii] that federal courts not adjudicate generalized grievances, and [iii] that the plaintiff's complaint falls within the zone of interests protected by the [constitutional provision] in question." *Pace v. Peters*, 524 F. App'x 532, 536 (11th Cir. 2013) (citing *Harris v. Evans*, 20 F.3d 1118, 1121 (11th Cir.1994)).

In *Individuals for Responsible Gov't, Inc v. Washoe Cnty.*, an ordinance required state customers to subscribe and pay for waste-removal services from a company that would pick up their trash and take it to a facility within the state. 110 F.2d 699, 702 (9th Cir. 1997). The plaintiffs did not want to subscribe, and they challenged the ordinance on dormant Commerce

Clause grounds; they argued that the ordinance "interfere[d] with interstate commerce by preventing them from utilizing dump sites outside the State." *Id.* Paying for unwanted services was sufficient to satisfy Article III standing, *id.*, but not prudential standing because their injury was "not even marginally related to the purposes underlying the Commerce Clause." *Id.* at 703. Even if the unasked for service and fees were used to haul trash to a neighboring state (removing the barrier to interstate commerce), the plaintiffs' injury would remain the same. *Id.*

Similarly, if NCRS offered funding to out-of-state energy providers, that would remove the barrier to interstate commerce alleged by Plaintiffs, but like in *Washoe County*, it would not change the injury—Plaintiffs would still be paying higher fees for retail electricity service. Therefore, the zone of interests prong of prudential standing is not satisfied.

Additionally, the CAC can be characterized as seeking to vindicate the rights of non-party, out-of-state energy providers, and Plaintiffs lack prudential standing for that interest. *See L.A.M Recovery*, 184 Fed. App'x at 88 (party attempting "to vindicate th[e] right on behalf of out-of-state" competitors lacks prudential standing). Plaintiffs are not competitors of Duke or FPL in the retail electricity market; they are consumers of retail electric. Their alleged injury is financial—paying higher rates for electricity—not commercial or competitive.

Duke concedes that the injury alleged by Plaintiffs may be sufficient to satisfy Article III's standing requirements, but contends that it is not enough for prudential standing to pursue a dormant Commerce Clause claim. The Court agrees. The Plaintiffs' dormant Commerce Clause claim is dismissed because there is no state action or private right of action; additionally, Plaintiffs lack prudential standing to bring a claim under the dormant Commerce Clause.

2. NCRS is not preempted by AEA.

The AEA does not preempt all State regulation in the field of nuclear energy products. Instead, the AEA preempts state regulations in the area of nuclear power plant safety. The text of the AEA specifies: "Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes *other than protection against radiation hazards*." 42 U.S.C. § 2021(k) (2012) (emphasis added). The states are empowered to determine the need for power and regulate the financing of construction of nuclear power plants since that is not related to safety. Therefore, NCRS is not preempted by AEA.

3. EPACT does not preempt NCRS.

In order to successfully challenge the NCRS on preemption grounds, plaintiffs must prove that "compliance with both federal and state regulations [is] a physical impossibility or state law [stands] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *PG&E*, 461 U.S. at 204. Plaintiffs argue that EPACT's distinguishing feature, its federal guaranteed loan program, directly conflicts with NCRS. Defendants argue that compliance with both NCRS and EPACT is possible.

Plaintiffs contend that NCRS disrupts the federal government's ability to encourage private sector development of environmentally-friendly alternative energy. They argue that nothing in AEA nor EPACT permits states to subsidize the construction cost of nuclear power plants. The goal of the federal legislation, Plaintiffs argue, is to encourage innovative, carbon-neutral nuclear technology and encourage commercial development *without subsidizing construction* of nuclear power plants; they find this objective to be obstructed, and directly conflicted, by the NCRS.

The Court relies on the presumption against preemption. "[I]n all preemption cases, and particularly in those in which Congress has legislated in a field which the States have

traditionally occupied, courts assum[e] that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citation omitted). Nothing in the text of EPACT displays an intent by Congress to preempt the state's ability to regulate the areas covered by the NCRS. Therefore, NCRS is not preempted by EPACT.

4. The Court declines supplemental jurisdiction over the derivative state-law unjust enrichment claim.

Having dismissed the federal law claims, the Court declines the exercise of supplemental jurisdiction over the related state law claims. Once all federal claims have been dismissed, district courts may decline to exercise supplemental jurisdiction over remaining state law claims. 28 U.S.C. § 1367(c)(3) (2012); *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1089 (11th Cir.2004) ("encourag[ing] district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial."). In addition, the state law claim for unjust enrichment is derivative of the dismissed claims alleging that NCRS is invalid; accordingly, the Court dismisses the claim for unjust enrichment.

I. CONCLUSION

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. The Motions [DEs 23, 24] are **GRANTED**;
2. The Class Action Complaint [DE 1] is hereby **DISMISSED WITH PREJUDICE**;
3. The Clerk shall **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 21st day of September, 2016.

WILLIAM P. DIMITROULEAS
United States District Judge

cc: Counsel of record

Exh. 8

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

BILOXI FREEZING & PROCESSING, INC., GULFSIDE CASINO PARTNERSHIP and JOHN CARLTON DEAN — **PLAINTIFFS**

VS. — **CAUSE NO. A2401-2016-00077**

MISSISSIPPI POWER COMPANY and SOUTHERN COMPANY — **DEFENDANTS**

ORDER AND REASONS ON MOTION TO DISMISS

This cause came to be heard upon Defendant Mississippi Power Company's Motion to Dismiss for Lack of Subject Matter Jurisdiction[1] in which Defendant Southern Company has joined.[2] Having considered the motion, the response[3] and reply thereto, arguments of counsel, and applicable law, the Court sustains the motion, all as outlined below.

I. Background

On July 11, 2016, Plaintiffs filed their First Amended Complaint ("Complaint")[4] against the Defendants Mississippi Power Company ("MPC") and Southern Company ("Southern") seeking injunctive relief and damages that they allege stem from the construction of the Kemper Power Plant ("Project"). Plaintiffs allege that systemic misrepresentations and fraud by the Defendants caused Project overruns that threaten "to damage their businesses, their livelihoods and their futures."[5] Plaintiffs further allege that their causes of action[6] and alleged damages are wholly unrelated to the reasonability of MPC's filed rates or the ability of the Public Service

[1] Doc. 19.
[2] Doc. 22.
[3] Plaintiffs filed supplemental responses [Docs. 50, 51] on June 19 and 21, 2017 during the time in which the Court had the instant motion under advisement. The Court does not find these additional responses persuasive on this Motion to Dismiss, but will address the supplemental response later in its order.
[4] Doc. 7.
[5] Doc. 7 at p. 1.
[6] Plaintiffs have asserted the following causes of action against the Defendants: (1) Violations of the Mississippi Consumer Protection Act (Miss. Code Ann. §§ 75-24-1, *et seq.*); (2) Injunctive Relief; (3) Fraud and Fraudulent Concealment; and (4) Unjust Enrichment.

Commission or Federal Regulatory Energy Commission's authority to approve them. Instead, Plaintiffs allege that this case is "about a breach of trust and deception, whereby a utility entrusted with the common good and protected by a rate-making regulatory scheme, deliberately committed numerous acts and [sic] fraud and set out . . . to abuse this trust and avoid accountability for its fraud and mismanagement in the interest of profits."[7]

In the instant motion, Defendants argue that this case is, in fact, entirely about rates and, for that reason, the Mississippi Public Service Commission ("PSC") is vested with exclusive jurisdiction to hear this case pursuant to Miss. Code Ann. § 77-3-5. Alternatively, the Defendants argue that Plaintiffs' claims are barred by the Filed Rate Doctrine and are either moot or not yet ripe. These issues are now before the Court for its consideration.

II. Law and Argument

A. Legal Standard

Subject matter jurisdiction is a threshold inquiry that must be decided prior to a court proceeding on the merits of a case. *Singing River Mall Co. v. Mark Fields, Inc.*, 599 So. 2d 938, 942 (Miss. 1992). Circuit courts have "original jurisdiction in all matters civil and criminal in this state not vested by [the] Constitution in some other court." *RAS Family Partners, LP v. Onnam Biloxi, LLC*, 968 So. 2d 926, 928 (Miss. 2007) (quoting Miss. Const. art. 6, § 156). When this jurisdiction is challenged, a court must then look solely to the allegations of the complaint to assess the nature of the controversy and the relief sought. *Singing River*, 599 So. 2d at 942. In the context of public utilities, "[t]he question becomes, then, whether Mississippi's laws authorize some body other than a circuit court to entertain and proceed [exclusively] with public utility matters." *Id.* If that question is affirmatively answered, then the court lacks subject matter jurisdiction. *Id.* at 942-43.

[7] Doc. 7, pp. 2-3.

B. Exclusive Jurisdiction of the Public Service Commission

The Mississippi Legislature established its utility-rate making scheme with the passage of the Mississippi Public Utility Act ("MPUA") in 1956. *See generally* Miss. Code Ann. §§ 77-3-1, *et seq*. The MPUA expressly vests the authority to regulate public utilities in the Mississippi Public Service Commission ("PSC"). *Id; Southeast Miss. Legal Services Corp. v. Miss. Power Co.*, 605 So. 2d 796, 798 (Miss. 1992) ("[T]he [PSC] is an arm of the legislature."). As a result, the PSC has exclusive, original jurisdiction over the intrastate business and properties of MPC, including the price that MPC's customers, including Plaintiffs, pay for electricity. *See* Miss. Code Ann. § 77-3-5; *see also Capital Elec. Power Ass'n v. Mississippi Power & Light Co.* 216 So. 2d 428, 430 (Miss. 1968) ("The Commission has. . . extensive regulatory powers over public utilities."). On this basis Defendants move to dismiss the Complaint under Miss. R. Civ. P. 12(b)(1).

In response, Plaintiffs argue that Mississippi's regulatory scheme does not divest state courts of jurisdiction to hear private lawsuits concerning consumer protection against fraud and unfair practices by public utilities.[8] But Plaintiffs do not identify any authority that stands for this proposition, and the Court has not found any.[9] Plaintiffs do cite to certain PSC Public Utilities Rules of Practice and Procedures ("PSC Rules"), but these rules do not and cannot

[8] Plaintiffs' Brief in Support of Opposition to Mississippi Power's Motion to Dismiss for Lack of Subject Matter Jurisdiction [Doc. 40] at pp. 13-17.

[9] Plaintiffs do cite *Am. Bankers' Ins. Co. of Fla. v. Alexander*, 818 So. 2d 1073 (Miss. 2001), which addressed insurance rates set by the regulatory agency, which the plaintiffs (in that case) alleged the defendants had exceeded with additional costs. The plaintiffs and defendants were in privity of contract, which invokes greater duties by the defendant than that of public utility provider and rate payer as here. The *Alexander* court did not find that the filed rate doctrine should be a bar to plaintiffs' claims, but for reasons different than those at issue here. The specific issue before this Court, however, is the extent of the jurisdiction given to the PSC under the MPUA. The *Alexander* decision, therefore, is not applicable to this analysis.

confer jurisdiction on state courts to hear cases such as this one given the clear legislative language of Miss. Code Ann. § 77-3-5.[10]

The Mississippi Supreme Court has made it very clear that "rate making authority remains legislative in character and rests within the power of the Public Service Commission." *Miss. Pub. Serv. Comm'n v. Miss. Power Co.*, 337 So. 2d 936, 940 (Miss. 1976). The judicial branch's only authorized oversight of retail electric rates is appellate review by the Mississippi Supreme Court of final PSC decisions. Miss. Code Ann. § 77-3-72. A trial court does not have jurisdiction to pass judgment on the reasonableness of utility rates or otherwise adjudicate the underlying conduct of a utility that may have affected those rates. *Miss. Pub. Serv. Comm'n v. Dixie Land & Water Co.*, 707 So. 2d 1086, 1087-88 (Miss. 1998).

Here, the Court can draw no other conclusion from the allegations of the Complaint that Plaintiffs' claims are strictly about rates. The only relationship that Plaintiffs have with MPC is as retail purchasers of electricity. While Plaintiffs' allegations of breach of trust, deception, mismanagement and fraud by the Defendants during that relationship are obviously worrisome, the substance of their claims is that their utility rates have been unjustly inflated. In fact, they admit that their damages result from "having purchased electricity from MPC in reliance on various misrepresentations made by MPC."[11] Any relief, therefore, would be wholly dependent on a finding by this Court that the rates about which they complain were not just and reasonable, and that determination is within the sound discretion of the PSC. Miss. Code. Ann. §§ 77-3-5,

[10] In any event, the rules cited by Plaintiffs have either been superseded or misinterpreted. The PSC Rules do not govern the issue of subject matter jurisdiction before this Court.

[11] Plaintiff's Brief in Support of Opposition to Mississippi Power's Motion to Dismiss for Lack of Subject Matter Jurisdictions [Doc. 40], p. 2. *See also* First Amended Complaint [Doc. 7], ¶¶66 (one plaintiff alleges paying "excess power costs" due to Kemper), 67 (excessive rates are a disproportionate burden on its users), 97 (Plaintiffs allege Defendants have been unjustly enriched and that Defendants possess monies paid by Plaintiffs), 98(b)(in their damages designation, Plaintiffs ask for the court to return monies acquired by Defendants, i.e., increased electrical rates).

77-3-33(1); *Singing River*, 599 So. 2d at 942. Utility rates approved by the PSC but called anything else are still rates.

In order to circumvent this jurisdiction, Plaintiffs contend[12] that their due process rights will be violated if they are forced to pursue their claims with the PSC.[13] They allege that Mississippi Public Utilities Staff ("MPUS") and MPC have recently engaged in private settlement discussion related to the Kemper Plant that have wholly tainted the proceedings at the PSC, leaving them no fair and impartial tribunal outside of this Court. The Court is not persuaded.[14] Plaintiffs still have the right[15] and opportunity to intervene in those proceedings if they choose to do so.[16] If they are aggrieved by the PSC's decision or any settlement and believe that the process was unfair and impartial, that issue would then be ripe for appellate review. *See Miss. Power Company, Inc. v. Mississippi Public Service Commission and Thomas A. Blanton*, 168 So. 3d 905, 915 (Miss. 2015) (holding that the PSC did not have authority to enter into private settlement agreement). It is not an issue for this Court to take up in order to determine jurisdiction.

The Court, therefore, finds that given the nature of the controversy and the relief sought, however couched, it lacks subject matter jurisdiction over Plaintiffs' claims. Accordingly, this case should be dismissed pursuant to Miss. R. Civ. P. 12(b)(1).

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[12] *See* Footnote 3 *supra*.
[13] *See* Miss. Code Ann. §§ 77-3-65 to 77-3-72; Rules 6.121 and 11.101 of the PSC Procedure Rules.
[14] Quite the opposite. The argument in and exhibits attached to Plaintiffs' Amended Supplemental Response [Doc. 51] to Defendants' dispositive motions solidifies in the Court's mind that Plaintiffs' claims are entirely about rates.
[15] *See* Rules 6.121 and 11.101 of the PSC Public Utilities Rules of Practice and Procedures.
[16] In re Mississippi Power Co., Docket No. 2015-UN-80; EC-120-0097-00.

C. Filed Rate Doctrine

Plaintiffs' claims are also subject to dismissal pursuant to the Filed Rate Doctrine.[17] The Filed Rate Doctrine is a well-established rule that prohibits a collateral attack on a utility's approved rates. "The two purposes of the filed-rate doctrine are that first, it protects against 'price discrimination' between ratepayers (the 'nondiscrimination strand'), and second, it preserves the exclusive role of regulatory agencies in approving rates that are 'reasonable' by 'keeping courts out of the rate making process' (the 'non-justiciability strand')." *Am. Bankers' Ins. Co. of Fla. v. Alexander*, 818 So. 2d at 1081-82 (Miss. 2001) (citing *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2d Cir.1998)). The doctrine "recognizes that where a legislature has established a scheme for utility-rate making, the rights of the rate-payer in regard to the rate he pays are defined by that scheme." *Taffett v. Southern Co.*, 967 F.2d 1483, 1490 (11th Cir. 1992).

Mississippi's codification of the Filed Rate Doctrine can be found at Miss. Code Ann. § 77-3-35(1). It provides, in pertinent part:

> No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Id. Under the filed rate doctrine, any "filed rate" - that is, a rate approved by the governing regulatory agency - is "per se reasonable and unassailable in judicial proceedings brought by ratepayers." *American Bankers' Ins. Co. of Fla. v. Wells,* 819 So. 2d 1196, 1203-04 (Miss. 2001)

[17] Defendants assert the applicability of the Filed Rate Doctrine in both the Motion to Dismiss for Lack of Subject Matter Jurisdiction [Doc. 20] and the Motion to Dismiss for Failure to State a Claim or for Judgment on the Pleadings [Doc. 23]. When considering a Rule 12(b)(6) motion, the allegations of the complaint must be taken as true and the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of his claim. *T.M. v. Noblitt,* 650 So. 2d 1340, 1342 (Miss. 1995). The same standard applies to Rule 12(c) motions. *See R.J. Reynolds Tobacco Co. v. King,* 921 So. 2d 268, 270-71 (Miss. 2005).

(quoting *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 18 (2d Cir. 1994); *United Gas Pipe Line Co. v. Willmut Gas & Oil Co.*, 97 So. 2d 530, 535 (Miss. 1957) (petitioner "can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms") (quoting *Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Comm'n,* 341 U.S. 246, 251, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951)). Regulated utilities such as MPC, therefore, are statutorily prohibited from deviating from the terms and conditions in the rate approved by the PSC, which are the "filed rates." *Wells* at 1203-04. Any damages, "restitution and/or disgorgement"[18] to change the amounts paid by Plaintiffs to Defendants would abrogate the filed rate doctrine since these amounts were paid only after being approved by the PSC.

Likewise, a MPC consumer does not have vested property rights in the utility rate that they pay, but only the "rights" that allow public participation in the rate-making process under the regulatory scheme adopted by the Mississippi Legislature. *See Mississippi Power Co. v. Goudy*, 459 So. 2d 257, 260 (Miss. 1984). That is to say, such a consumer must pay the filed rates or, if aggrieved, exercise the rights granted by the regulatory scheme. Those rights include intervening into a PSC rate proceeding or filing a written complaint with the PSC to investigate any concerns. *See* Rules 6.121 and 11.101 of the PSC Procedure Rules. If the consumer feels aggrieved by the PSC decision, that consumer may appeal to the Mississippi Supreme Court as provided by statute. *See* Miss. Code Ann. §§ 77-3-65 to 77-3-72. This regulatory scheme is structured so that the PSC can provide a remedy to compensate consumers where appropriate, including compensation for fraud, without weakening the rate-making process. *See* Miss. Code Ann. §§ 77-3-33, 77-3-41; *Blanton*, 168 So. 3d 905 (Miss. 2015).

[18]First Amended Complaint [Doc. 7], ¶98(b).

Under prevailing case law and statutory authority, a consumer cannot maintain an action in state court against a public utility claiming injury to business and/or property for allegedly fraudulent rates approved by the PSC. Once a rate is approved, it is final; it is deemed *per se* reasonable, and under the Filed Rate Doctrine, is unassailable in judicial proceedings brought by rate payers. *See Alexander*, 818 So. 2d at 1082 (citing *Wegoland*, 37 F.3d at 21. A consumer "can claim no rate as a legal right that is other than the filed rate." *Id.* (quoting *United Gas Pipe Line Co. v. Willmut Gas & Oil Co.*, 97 So. 2d at 531. Further, fraud by a public utility in connection with rate-setting is not recognized in Mississippi as an exception to the Filed Rate Doctrine.[19] Courts have recognized that even in the face of a civil RICO claim, so long as the public utility charged the approved rate, the court is without jurisdiction to adjudicate the fraud allegations because the public utility only charged the approved rate. *See Taffett v. Southern Co.*, 967 F. 2d 1283 (11th Cir. 1992). Such a claim, therefore, is barred regardless of the culpability of a defendant's conduct in association with public utility rates. Otherwise, any award of damages or other relief "would result in a judicial determination of the reasonableness of that rate, [which] is prohibited under the filed rate doctrine." *Hill v. BellSouth Telecomms., Inc.*, 364 F.3d 1308, 1317 (11th Cir. 2004); *see also Alexander*, 818 So. 2d at 1082.

Here, as discussed infra at II(B), at the essence of Plaintiffs claims is the argument that Plaintiffs have suffered injury because the alleged breach of trust, deception, mismanagement and fraud by the Defendants resulted in the approval and imposition of higher utility rates. Even

[19] Plaintiffs' reliance on the *Alexander* and *Wells* opinions on this issue is misplaced. Those cases are distinguishable because they involved fraud in the performance of private, contractual claims. Plaintiffs have not alleged a private claim against Defendants but a broad claim of "fraud on the general public." Doc. 40, p. 17. This is a distinction with a difference. *See Gipson v. Fleet Mortg. Group, Inc.*, 232 F. Supp. 2d 691 (S.D. Miss. 2002). Further, the defendant in *Alexander* did not charge the approved rates and owed plaintiffs a fiduciary duty, which is not the case here. *Ware v. Entergy Mississippi, Inc.*, 887 So. 2d 763, 769 (Miss. 2003) is also factually distinguishable as it dealt with the placement of high voltage lines. The Court declines to broadly interpret these three cases to determine that the filed rate doctrine should not apply here.

taking every allegation in the Complaint as true, this argument does not state a legally cognizable cause of action. Claims for injury resulting from these acts/omissions are barred because any resulting damages would have a direct correlation to the filed rates and necessitate a determination by this Court of reasonableness which this Court declines to. This Court's determination of damages – the reasonable rate –might be wholly different than another court's determination hearing identical evidence. The filed rate doctrine, for good reason, avoids these conflicts. *See Taffett v. Southern Co.*, 967 F.2d 1483 (11th Cir. 1992).

III. Conclusion

At a motion to dismiss, the Court must evaluate the [amended] complaint to determine whether it has jurisdiction to allow the lawsuit to progress. Courts generally are reluctant to dismiss a case at this point in the litigation, but the Court is persuaded that Plaintiffs' remedies cannot be adjudicated in this forum. The Plaintiffs' connection with MPC as a purchaser of electricity and nothing more does not impart jurisdiction to this Court. While the allegations made against these defendants are most troubling to the Court, the Court cannot be motivated by public clamor or partisan interests to reach a decision other than the one it has reached herein. The Court does not have to like all of the decisions that it reaches, but it must remain steadfast in the faithful application of the law.

It is, therefore,

ORDERED AND ADJUDGED that Mississippi Power Company's Motion to Dismiss for Lack of Subject Matter Jurisdiction is hereby granted. Defendants' remaining dispositive motions are, therefore, dismissed as moot.

SO ORDERED AND ADJUDGED this the 23rd day of June, 2017.

CHRISTOPHER L. SCHMIDT
CIRCUIT COURT JUDGE

FILED
JUN 23 2017
CONNIE LADNER
CIRCUIT CLERK
BY: _____ D.C.

MANDATE
SUPREME COURT OF MISSISSIPPI

To the Harrison County Circuit Court 1st Judicial District - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a judgment as follows:

Supreme Court Case # 2017-CA-00984-SCT
Trial Court Case #A2401-16-77

Biloxi Freezing & Processing, Inc., Gulfside Casino Partnership and John Carlton Dean v. Mississippi Power Company and Southern Company

Friday, 13th day of July, 2018
The parties' Joint Motion for Dismissal with Prejudice should be, and it hereby is, granted. Each party shall bear its own costs.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, D. Jeremy Whitmire, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on August 3, 2018, A.D.

D. Whitmire

CLERK

Serial: **220029**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-CA-00984-SCT

BILOXI FREEZING & PROCESSING, INC., GULFSIDE CASINO PARTNERSHIP AND JOHN CARLTON DEAN

v.

MISSISSIPPI POWER COMPANY AND SOUTHERN COMPANY

ORDER

The undersigned Justice hereby finds and adjudicates that the parties' Joint Motion for Dismissal with Prejudice should be, and it hereby is, granted.

Each party shall bear its own costs and oral argument is cancelled.

SO ORDERED, this the 13th day of July, 2018.

James W. Kitchens

JAMES W. KITCHENS, PRESIDING JUSTICE

IN THE SUPREME COURT OF MISSISSIPPI
NO. 2017-CA-00984

BILOXI FREEZING & PROCESSING, INC., GULFSIDE CASINO PARTNERSHIP and JOHN CARLTON DEAN **APPELLANTS**

V.

MISSISSIPPI POWER COMPANY and SOUTHERN COMPANY **APPELLEES**

JOINT MOTION FOR DISMISSAL WITH PREJUDICE

COME NOW, Appellants, Biloxi Freezing & Processing, Inc., Gulfside Casino Partnership and John Carlton Dean ("Appellants") and Appellees, Mississippi Power Company and Southern Company ("Appellees") (collectively referred to as the "Parties") and jointly request this Court to dismiss this action with prejudice pursuant to Rule 42(b) of the Mississippi Rules of Appellate Procedure, and in support thereof would show unto the Court the following, to wit:

1. The Parties have resolved all claims currently pending before this Court.

2. The Parties have agreed to bear their respective costs.

WHEREFORE, PREMISES CONSIDERED, Appellants, Biloxi Freezing & Processing, Inc., Gulfside Casino Partnership and John Carlton Dean, and Appellees, Mississippi Power Company and Southern Company, request this Court to dismiss this matter with prejudice and with each party to bear its respective costs and that this matter be removed from the oral argument calendar for July 30, 2018.

Respectfully submitted, this the 13th day of July, 2018.

BILOXI FREEZING & PROCESSING, INC., GULFSIDE CASINO PARTNERSHIP AND JOHN CARLTON DEAN

BY: OWEN, GALLOWAY & MYERS, P.L.L.C.

BY: /s/ *Joe Sam Owen*
Of Counsel

MISSISSIPPI POWER COMPANY and SOUTHERN COMPANY

BY: BALCH & BINGHAM LLP

BY: /s/ *Ben H. Stone*
Of Counsel

JOE SAM OWEN (MS BAR NO. 3965)
ROBERT P. MYERS (MS BAR NO. 9007)
OWEN, GALLOWAY & MYERS, P.L.L.C.
1414 24th Avenue
Owen Building
Gulfport, MS 39501
Telephone: (228) 868-2821
Facsimile: (228) 868-2831
jso@owen-galloway.com
rmp@owen-galloway.com

BEN H. STONE (MS Bar No. 7934)
JONATHAN P. DYAL (MS Bar No. 99146)
K.C. HIGHTOWER (MS Bar No. 101246)
BALCH & BINGHAM LLP
P.O. Box 130
Gulfport, MS 39502
Telephone: (228) 864-9900
Facsimile: (228) 864-8221
bstone@balch.com
jdyal@balch.com
kchightower@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record.

Further, I hereby certify that I have sent via United States Mail, postage prepaid, a true and correct copy of the document to the following non-MEC participant:

Honorable Christopher L. Schmidt
Circuit Court Judge
P.O. Box 1461
Gulfport, MS 39502

This the 13th day of July, 2018.

/s/ *Joe Sam Owen*
Of Counsel

Exh. 9

SCE&G

VC Summer - Project Governance Review

July 2011

Confidential Attorney Client Communication
Attorney Work Product
Prepared at the Direction of Counsel

This information has been prepared solely for the use and benefit of SCANA and SCE&G, and is not intended for reliance by any other person

PRICEWATERHOUSECOOPERS

PRICEWATERHOUSECOOPERS

PricewaterhouseCoopers LLP
10 Tenth Street, Northwest
Suite 1400
Atlanta, GA 30309-3851
Phone (678)419 1000
Fax (678) 419 1239
www.pwc.com

July 2010

Mr. Ronald Lindsay
General Counsel
SCANA/SCE&G
100 SCANA Parkway
Cayce, SC 29033

Dear Mr. Lindsay,

PricewaterhouseCoopers LLP ("PwC") performed certain services to assist SCANA Corporation ("SCANA") and South Carolina Electric & Gas ("SCE&G")(collectively referred to as "the Company" or "you") to evaluate the governance framework and control environment associated with the new nuclear build at the V.C. Summer Plant ("Project"). Our services were performed and this report was developed in accordance with the Advisory Services Consulting Agreement between PwC and SGE&G dated March 5, 2010 and is subject to the terms and conditions included therein.

Our services were performed in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants ("AICPA"). Accordingly, we are providing no opinion, attestation or other form of assurance with respect to our work and we did not verify or audit any information provided to us.

Our work was limited to the specific procedures and analysis described herein and was based only on the information made available through May 31, 2011. Accordingly, changes in circumstances after this date, or information and data not provided to us, could affect the observations outlined in this report.

This information has been prepared solely for the use and benefit of, and pursuant to a client relationship exclusively with SCANA and SCE&G. PwC disclaims any contractual or other responsibility to others based on its use and, accordingly, this information may not be relied upon by anyone other than SCANA and SCE&G. We appreciate the opportunity to assist you with this matter, and look forward to discussing our findings and recommendations with you in further detail.

Very truly yours,

PricewaterhouseCoopers LLP

Table of Contents

1.0 Executive Summary

1.1 Engagement Overview

In March 2010, South Carolina Electric and Gas (SCE&G) engaged PricewaterhouseCoopers LLP (PwC) under a Master Services Agreement to evaluate the governance and control framework related to the VC Summer Units 2&3 Nuclear Power Plant Project (the Project). Following the initial assessment in 2010, SCE&G issued a Statement of Work (SOW) retaining PwC to serve as an independent project advisor for the development of VC Summer Units 2&3. Under the terms of the SOW, PwC is to perform semi-annual project assessments, providing recommendations for improving project delivery.

In performing the project assessment which is the subject of this report, we conducted interviews with Project participants, reviewed Project documents, and toured the Project site. Based on our utility and construction industry experience, we have identified areas where SCE&G has implemented leading practices and we offer a number of recommendations for SCE&G to consider as it seeks to strengthen individual elements of the governance and control framework.

The objectives of our recommendations are to enhance SCE&G's ability (i) to make timely and prudent management decisions on issues with the potential to impact Project cost, scope, schedule and quality, and (ii) to create documentation that both supports the decision-making process and demonstrates the reasonableness of the decisions reached in managing the Project. Recognizing that this is an evolving organization at an early stage of the project life cycle, our recommendations are meant to provide guidance for its ongoing development.

1.2 Overall Assessment

Since the first project assessment in March 2010, the SCE&G Project team has made some progress in developing and implementing a governance and control framework for the Project, and has made an effort to address some of the recommendations presented in our 2010 Project Governance Review Report. However, the Project Team has not acted on a considerable number of the 2010 recommendations, and continues to lag behind in implementing effective governance and control processes in several key performance areas that will have a significant impact on the ultimate success of the Project. Indeed, various staff indicated during interviews that there appears to be an overriding focus on near-term budgetary constraints, rather than on laying the groundwork that is needed to improve the likelihood of achieving overall Project success.

Details regarding the team's progress against the 2010 recommendations are presented in Section 4.0 of this report. The following section summarizes our key findings regarding the current status of the governance and control framework for the Project. Details regarding these observations, and related recommendations for improving performance in these areas, can be found in Section 3.0 of this report.

1.3 Summary of Key Observations

Organizational Framework

The organization is not sufficiently staffed in a number of key functional areas either to adequately address current challenges or to effectively prepare for meeting upcoming demands. For example, despite numerous, documented quality problems with the Consortium and its equipment vendors, the Quality organization does not have the staff it needs to independently identify quality issues, to drive resolution of such issues, or to evaluate the Consortium's quality assurance shortcomings. Operational Readiness is not yet staffed sufficiently to meet operator training requirements, and although the Business & Finance team has assumed responsibility for managing the $275 million transmission line contract on a time and materials basis, it has not yet supplemented its staff to accommodate this demanding effort. In addition, the Project staffing plan previously developed and approved has been suspended.

EPC Contract Management

The Project team is not aggressively tracking the Consortium's compliance with its contract obligations, nor is it consistently issuing contractual notices when deficiencies in the Consortium's performance are identified. For example, rather than independently conducting contract compliance oversight activities, the Project team uses the joint contract compliance matrix that is maintained by the Consortium as the foundation for such efforts. Similarly, despite numerous failures by the Consortium to comply with either quality or financial reporting requirements, the Project team has not issued contract notices regarding such noncompliance. In addition, the Project team is not consistently seeking the participation and advice

of SCE&G counsel in the ongoing evaluation of contract performance issues and the consideration of potential contract changes.

Financial Management

The Consortium has not yet provided Earned Value information to the Project team as required by the Contract and by its own Project Execution Plan, preventing SCE&G from conducting a meaningful evaluation of project schedule and cost progress, and from forecasting costs related to the Target and the Time & Material (T&M) portions of the EPC contract. SCE&G has paid the Consortium more than $200 million in Target and T&M costs for the Project, yet has no reliable mechanism for evaluating progress on such work. Although the Consortium reportedly intends to use ShawTrac to facilitate (i) Earned Value tracking, (ii) development of the project WBS, and (iii) various other schedule and financial management activities, ShawTrac is not yet functional and the Consortium has not presented an alternative to accomplish its contractual requirements.

Issue and Risk Management

The Project team does not have a reliable means of identifying, tracking or resolving issues / risks with the potential to impact Project success. The recently developed issue log relies in large measure on the Business and Finance staff to identify and document issues based on its review of Project documents, rather than on the functional staff's day-to-day involvement in performance. There does not appear to be consensus among the functional leads as to the purpose or utility of the issue management process, and participation in issue review meetings is in some instances delegated to staff without broad knowledge of all functional issues. The process as currently designed is not scalable, and the Business and Finance staff will not be able to effectively support it as the Project advances and work accelerates. Similarly, there is no dedicated process for identifying, evaluating and mitigating risks (potential events that may impact Project success).

Communication and Reporting

The Consortium's current approach to reporting status of performance inadequately reflects Project progress and does not highlight known issues that are impacting the Project. For example, the Consortium reports Quality performance as "green" despite the numerous quality problems on the Project that have necessitated stop work orders and continue to impact overall performance. The Consortium similarly reports favorably on cost performance despite being unable to provide any support for the earned value of the work completed. In addition, the Project team does not conduct its own analysis of cost, schedule or quality performance, nor does it independently evaluate progress reported by the Consortium on a monthly basis; rather, it summarizes the data presented by the Consortium in its monthly report. The absence of reliable performance metrics demands more detailed, independent analysis by the Project team of cost, schedule and quality status, as well as development of cost and schedule forecasts.

Schedule Management

The Project team does not perform a detailed analysis of the monthly schedule updates provided by the Consortium. In the absence of computer-based analysis of various schedule metrics, the Project team cannot accurately and effectively determine current status, or identify schedule variances and risks. Similarly, although the Consortium highlights in its own procedures the importance of maintaining an integrated Project schedule, and of periodically reconciling the schedule with the data maintained in the financial / accounting system, there is no evidence that such reconciliation has yet occurred. This reconciliation is particularly important with respect to managing the Target and the T&M components of the work.

Quality Management

As noted in connection with the discussion of organizational staffing considerations, there have been numerous, documented quality problems with the Consortium and its equipment vendors that have led to stop work orders and that otherwise have impacted the Project schedule. The number and magnitude of these significant quality issues indicate a systemic problem with the Consortium's approach to Quality Control and Quality Assurance. To date, the Project team's approach to quality oversight has been more reactive (i.e., performing root cause studies), than proactive. Given the Consortium's failings with respect to quality, the Project team needs to shift its quality oversight efforts towards identifying quality shortcomings before they impact the project.

The table presented below summarizes the foregoing observations and the related recommendations we have developed, and references the sections of the report where detailed supporting data can be found.

Key Observations	Recommendations	Ref.
Organizational Framework		
– The organization is not sufficiently staffed in a number of key functional areas either to adequately address current challenges or to effectively prepare for meeting upcoming demands. – The Project staffing plan previously developed and approved has been suspended.	– Evaluate potential impacts of delays in implementing the current Project staffing plan, and determine the necessary timing of future hires in the context of Project schedule requirements.	§3.1.1 §3.5.2
EPC Contract Management		
– The Project's use of the combined contract compliance matrix does not appear to provide adequate compliance monitoring of Consortium performance – SCE&G Legal does not have a consistent or defined role in the review and analysis of performance issues that could impact the EPC contract	– In addition to maintaining the combined contract compliance matrix, SCE&G should periodically conduct formal EPC contract compliance reviews to identify instances of Consortium non-compliance with the EPC contract, and formally place the Consortium on notice of any non-compliance identified. – Formalize the involvement of SCE&G legal in the review and analysis of all performance issues that could have an impact on contractual rights and obligations, including contract compliance activities and analysis of change orders.	§3.3.1 §3.3.2
Financial Management		
– As identified last year, SCE&G is still unable to track earned value or forecast costs related to the Target and Time & Material (T&M) portions of the EPC contract. SCE&G has paid the Consortium more than $200 M in Target and T&M costs for the Project.	– Forecasting Consortium Target and T&M Costs Issue formal notice to the Consortium regarding its lack of performance related to earned value and cost forecasting. – Identify alternatives for evaluating the Consortium's performance and earned value on the Project.	§3.5.1
Issue and Risk Management		
– The recently developed Issue Log does not appear to be an effective issue management tool given the current approach having Business and Financial Services identify, track and manage issues. – The current approach to issue management does not clearly address risk management for the Project	– Communicate the critical importance of risk and issue management to the Project team and work towards a process that (i) places ultimate responsibility on the individual business units, not the Business and Financial Services group, to identify, enter, track and manage issues using the recently developed process, and (ii) requires each business unit to be represented at issue management meetings by someone with broad knowledge of all of the issues within the purview of that business unit. – Create a comprehensive risk management process that drives cross-functional identification and prioritization of risks, and focuses on mitigating high priority risks before they impact Project objectives.	§3.6.1 §3.6.2

Key Observations	Recommendations	Ref.
Communication & Reporting		
– The Consortium's current approach to reporting progress inadequately reflects the current Project performance and does not reflect known issues impacting the Project.	– Drive Improved Consortium Reporting by establishing and defining a combination of key metrics for each area included in the metrics package that collectively provide an accurate and fair representation of the status of performance for that area.	§3.7.1
Schedule Management		
– The current SCE&G manual review and schedule comparison of the Consortium's schedule does not provide an accurate or timely identification of variances and issues between the monthly updates. – The Consortium does not appear to be conducting or providing SCE&G the information related to the analysis required to achieve the integration between the Project schedule and the financial / accounting system for the Project.	– SCE&G should update NND-CS-0003 to define the minimum parameters for reviewing the monthly Consortium updates to the integrated Project schedule. – SCE&G should develop a series of "What if" analyses that examines potential changes to the critical and near critical paths that would be expected to result from various Consortium activities. – SCE&G should consider developing a secondary, high level project plan to facilitate periodic performance of a probabilistic schedule analysis that is based on defined risk criteria and that models the most likely impact of project risks on the forecast completion date. – SCE&G should consider implementing a software technology to assist in the review of the integrated Project schedule. Such software would allow SCE&G to conduct an analysis similar to the one contained within Appendix 5.5 of this report. – SCE&G should ensure the Consortium provide a detailed schedule narrative each month describing the changes to logic, constraints and both critical and near critical paths – SCE&G should direct the Consortium to perform the cost and schedule integration analyses required by the Consortium's procedure, and monitor its progress in developing the integrated Project schedule and the reconciliation of financial information for the Project, namely the Target Price and Time & Material components, and document any areas of non-compliance with the EPC contract.	§3.8.1 §3.8.2
Quality Management		
– The number and magnitude of significant quality-related issues that have impacted Project indicate a potential systemic problem with the Consortium's approach to Quality Control and Quality Assurance. – SCE&G's approach to oversight of the Consortium's Quality activities does not appear to be adequate given the potential systemic problem.	– SCE&G should evaluate the sufficiency of the Consortium's approach to quality control and quality assurance within the Consortium member organizations with respect to their performance and the performance of major Consortium vendors. – After the assessment is completed, SCE&G should require the Consortium to implement required improvements at its cost	§3.9.1

Ref.	Observation / Risk	Recommendation	Priority
	group to identify and manage issues for the multiple business units. Indeed, the current approach to issue management does not support the comprehensive identification of critical Project issues, and will not be sustainable as the Project advances and the number of issues increase.		
3.6.2	**Risk Management** **Observations** ***Refer to Section 4.0 reference 3.6.1R1 - Develop a Risk and Issues Management Process, for related recommendations from the previous PwC report.*** While the newly created issue management process defined in NNDG 0016 attempts to track issues for the Project, it does not call out risks (potential issues) separately. There does not appear to be any formal process, procedure or approach for identifying, managing or mitigating risks to the Project. **Potential Risk** Without a well defined risk management process, the Project is at risk of missing opportunities to identify and mitigate risks to the Project before they impact cost, schedule, and quality objectives.	Create a comprehensive risk management process that drives cross-functional identification and prioritization of risks, and focuses on mitigating high priority risks before they impact Project objectives.	**High**

3.7 Communication & Reporting

Ref.	Observation / Risk	Recommendation	Priority
3.7.1	**Drive Improved Consortium Reporting** **Observations** ***Refer to Section 4.0 reference 3.7.4R1 - Monthly Reporting Improvements, for related recommendations from the previous PwC report.*** The Consortium's current approach to reporting progress inadequately reflects issues that are known to exist, For example, the Metrics Reporting Package generated by the Consortium for the monthly meeting held on April 21, 2011 contains information that is incomplete and misleading. The VC Summer Performance Indicator Overview on page 3 of the report contains five green indicators (Safety, Quality Assurance, Construction, Cost Performance, Compliance and Licensing) and four yellow indicators (Problem Identification and Resolution, Engineering, I&C and Simulator and Procurement). The Quality Assurance metric focuses only on the execution of witness and hold point inspections. While this is an important item to track, it should not be the only component of Quality Assurance reported for the Project. It is misleading to have a Quality Assurance indicator of green given the number of quality related issues that the Project continues to experience (e.g. stop work orders for vendors, contractors, and the Shaw module facility). The Cost Performance indicator also is green. This metric tracks the Consortium's planned spend against actual spend for the Target Price portion of the Project. The metric simply reports that the Consortium has spent less than planned on Target Price work activities, but it does not provide any indication of the value of the work performed during the reporting period. The metric does not include any consideration of earned value for the Target Price portion of the Project. The absence of this information is magnified when considering that a number of the performance factors reported on page 22 of the same metric package exceed 1.0, which indicates that more money was spent then actual value earned. **Potential Risk** The metrics used to report the Project's status should provide a complete view of the Project. Having a single metric drive the indicator for a key area of the Project (e.g. Quality Assurance) does not accurately represent the overall performance in that area.	Establish and define a combination of key metrics for each area included in the metrics package that collectively provide an accurate and fair representation of the status of performance for that area.	High

3.9 Quality Management

Ref.	Observation / Risk	Recommendation	Priority
3.9.1	**Enhancing Quality Oversight** **Observations** ***Refer to Section 4.0 reference 3.9.2R1 - Finalize the Quality Assurance Plan, for related recommendations from the previous PwC report.*** There have been a number of significant quality-related issues that have impacted Project performance. Some of the recent quality issues indicate systemic problems with the Consortium's approach to Quality Control and Quality Assurance. This is highlighted by the identification of deficiencies exhibited by a Consortium approved contractor, Chicago Bridge and Iron (CB&I), and those identified at the Shaw Module Solutions (SMS) facility. SCE&G's approach to oversight of the Consortium's Quality activities does not appear to be adequate. **Potential Risk:** If the current approach to quality assurance continues without modification, the Project will most likely suffer significant delays and increased cost due to stop work orders issued by the Project or by regulatory agencies.	SCE&G should conduct an independent review of the Consortium's approach to quality control and quality assurance within the Consortium member organizations with respect to their performance and the performance of major Consortium vendors. The focus of this assessment would be to identify all gaps within the current approach and provide detailed recommendations to eliminate or close the identified gaps. After the assessment is completed, SCE&G should require the Consortium to implement the identified improvements at its own cost.	**High**

Report Reference	Recommendation	Status Update	Status	Priority
	• changing original durations. Further, SCE&G should develop a series of "What if" analyses including an evaluation of changes to the critical and near critical paths resulting from significant project impacts. • SCE&G should also consider the development of a secondary, high level project plan to allow the application of a probabilistic schedule analysis based on defined risk criteria and determined effect on P50 completion date.			
3.8.3R1	**Resource Loading** SCE&G should request resource loaded schedules from the Consortium going forward. It is often not feasible to directly load a detailed engineering schedule with resources. However, the Consortium should work to form a closer link between the resource requirements and the scheduled activities and provide this linkage information to SCE&G. Monthly reports should contain updated resource projections based on the underlying schedule data. These projections should detail the number and type of resources. The project controls team should periodically evaluate resource production rates based on historical performance and project completion dates based on likely resource profiles.	• ***PwC did not observe any progress related to this recommendation.***	No Action	Medium
3.8.4R1	**Project Wide Work Breakdown Structure (WBS)** The uses of a standardized, project wide WBS is industry standard practice and should be a high priority as the Consortium continues to develop the project control framework. Where possible, the WBS should be linked to FERC accounting codes to assist with cost allocation to schedule items and subsequent reporting to the commission. SCE&G should ensure that the WBS structure is in place for all work for which cost and schedule for the project are tied. This would include all owner directed work, internal personnel charges and other associated costs.	• ***PwC did not observe any progress related to this recommendation.***	No Action	Medium
3.8.5R1	**Schedule Design** Perform detailed variance analysis on each schedule provided by the	• ***PwC did not observe any progress***	No Action	High

Report Reference	Recommendation	Status Update	Status	Priority
	Consortium within 5 days of issue. Discuss unexplained changes with schedule team and Consortium. Validate critical and near critical paths identified in monthly Consortium reports. Analyze use of constraints to adjust float paths. Develop a monthly dashboard summary that evaluates performance / changes against each critical and near critical float paths as well as total float degradation by schedule, resource forecasts with narratives, milestone summary charts, progress curves, float distribution, etc. Consider requesting the development of a detailed schedule narrative from the Consortium describing baseline assumptions, duration calculations, logic considerations, resource allowances etc.	*related to this recommendation.*		
3.8.6R1	**Earned Value** SCE&G should closely monitor the use of and output from ShawTrac and while it should provide useful insight into the current project progress and forecast, it will only provide value if the data entered is accurate. Progress measurement should be closely monitored.	• *PwC did not observe any progress related to this recommendation.* • *Refer to Section 3.5.1 for additional recommendations related to earned value.*	No Action	High
3.8.7R1	**Schedule Re-Baseline and Updates** Develop and implement schedule management procedures to describe acceptable and non acceptable changes. Develop and implement a schedule change management process that includes maintenance of a log of all changes made, together with their impacts. Highlight those changes that result in schedule compression and communicate changes to engineering, procurement, and construction teams. Increased schedule risk as a result of schedule changes should be understood by Management. The change control log should include details of the change, reasons for change, impact of the change and, where necessary, change approval Where durations need to be adjusted, only change remaining duration, not Original Duration.	• *PwC did not observe any progress related to this recommendation.*	No Action	High
3.9.1R1	**Implement a Single Corrective Action Program for the Project** SCE&G should continue to work with the Consortium to develop a documented plan that describes each of the elements required to	• SCE&G has created a draft procedure, NND-AP-0002 -Corrective	In Progress	Medium

Exh. 10

State of South Carolina) In the Court of Common Pleas
)
County of Greenville) Case No: 2019-CP-23-06675

Jessica S. Cook, et al.,
Plaintiff(s),
vs.
South Carolina Public Service Authority, et al.,
Defendant(s).

Video Deposition of STEVE BYRNE

Videotaped Deposition of STEVE BYRNE, taken before Heather R. Landry, CVR, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 9:30 a.m. and commencing at the hour of 9:35 a.m., Monday, February 17, 2020, at the office of Nelson Mullins, Charleston, South Carolina.

Reported by:

Heather R. Landry, CVR

external evaluation of the project during that time because of how poor the initial reports were?

MR. CHALLY: Object to the form.

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Let me try to clarify. Did SCANA elect against seeking independent project evaluation after the two initial evaluations because of the criticism against management that came out of the first two evaluations?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

(Whereupon, Project Governance Review was marked Exhibit No. 7 for identification.)

Q All right. Mr. Byrne, you've been handed what's been marked as Exhibit No. 7, SCANA_RP1683234. Do you see that?

A I see the document.

Q This looks like a project governance review dated July 2011, and it is a Price Waterhouse Coopers' review. Is that correct?
A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q And, Mr. Byrne, the title is "SCE&G VC Summer Project Governance Review." Do you see that?
A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q And so the purpose of this review, my understanding, the purpose of this review was to analyze the SCE&G governance controls that were in place to make sure that the Project was successful. Is that right?

MR. CHALLY: Object to the form.

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q In particular, Mr. Byrne, the goal of the PWC evaluation was to validate SCE&G's performance. Is that right?

MR. CHALLY: Object to the form.

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Mr. Byrne, at this point in time as the COO and President of Generation and Transmission, you would have seen this document. Is that correct?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q And so, Mr. Byrne, you would be familiar with the outcome of the PWC analysis. Is that right?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q In particular, you would have been familiar with the outcome that Price Waterhouse determined, the SCE&G team was failing to consistently evaluate data reported by the Construction Consortium and to document the results of such evaluation according to defined criteria. You recall that conclusion in the report. Is that correct?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina

constitutions.

Q You also recall that Price Waterhouse determined the metrics used on the project at this point in time did not actually represent the overall project performance. Is that correct?

MR. CHALLY: Object to the form.

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Do you recall that Price Waterhouse concluded there was no way to track earned value on the Project?

MR. CHALLY: Object to the form.

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Do you further recall that Price Waterhouse concluded there was no defined method to review the schedule, and without the ability to review the schedule the project team is at risk of failing to timely identify substantive variances

to the integrated project schedule. Do you recall that conclusion?

MR. CHALLY: Object to the form.

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Mr. Byrne, if you'll go forward in the document to the bottom of page 51. The Bates is SCANA_RP; the last four digits are .0051. And this page and the previous page it looks like a chart of individuals who were interviewed by Price Waterhouse and coming to the conclusions in this report. Do you see that?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Mr. Byrne, it looks like you and Jeff Archie were the last two people who were interviewed by Price Waterhouse Coopers. Is that correct?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q And, Mr. Byrne, the report that Price Waterhouse

assembled, it was not actually finalized until -- well, strike that. The draft report that we see here was prepared after they interviewed you. Is that correct?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Mr. Byrne, it's further my understanding that Price Waterhouse never finalized this assessment in 2011. Is that correct?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Moving forward in the report to section 5.5 starting on page 54, the last four are .0054. Looks like a consortium schedule review. Do you see that?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q Mr. Byrne, it looks like on the next page, schedule progress summary, there is a chart that is looking at the overall progress of the schedule. The note at the bottom indicates that the analysis was based on the March 26, 2011,

schedule update. Do you see that?
A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q Mr. Byrne, my understanding is that SCE&G went before the Public Service Commission in 2010 with a schedule modification. Is that correct?
A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q And they went before the PSC in 2012 with a schedule modification. Is that correct?
A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q But SCE&G did not go before the PSC in March of 2011 with any schedule modifications. Is that correct?
A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.
Q Do you recall whether SCE&G provided a modified schedule to Price Waterhouse in order to conduct its evaluation?
A I decline to answer pursuant to my right against

self-incrimination under the US and South Carolina constitutions.

Q And was that modified schedule from March of 2011 ever provided to the Public Service Commission?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

Q And, Mr. Byrne, did SCE&G ever include any information about this Price Waterhouse analysis in any of its submissions to the Public Service Commission?

A I decline to answer pursuant to my right against self-incrimination under the US and South Carolina constitutions.

(Whereupon, Transcript of Testimony was marked Exhibit No. 8 for identification.)

Q Mr. Byrne, I've handed you what's been marked as Plaintiff's Exhibit No. 8. And it is your public testimony in docket number 2012-203-E before the South Carolina Public Service Commission. Do you see that?

A I see the document.

Exh. 11

State of South Carolina) In the Court of Common Pleas
)
County of Hampton) Case No: 2017-CP-25-00348

Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all other similarly situated,

Plaintiff(s),

vs.

South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as

Video Deposition

of

Michael Crosby

director of the South Carolina)
Public Service Authority;)
David F. Singleton, in his)
capacity as director of the)
South Carolina Public Service)
Authority; Jack F. Wolfe, Jr.,)
in his capacity as director of)
the South Carolina Public)
Service Authority; Central)
Electric Cooperative, Inc.;)
Palmetto Electric Cooperative,)
Inc.; South Carolina Electric)
& Gas Company; and SCANA)
Corporation,)
)
Defendant(s).)
)

Video deposition of Michael Crosby, taken before Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 9:30 a.m. and commencing at the hour of 9:45 a.m., Wednesday & Thursday, June 20 & 21, 2019, at the office of Nelson Mullins, Columbia , South Carolina.

Reported by:

Jennifer L. Thompson, CVR-M

A But I did say that I kind of did a mirror calculation at some point.
Q When did you do that?
A I don't recall exactly. It's in my file, if you guys have it.
Q What does it look like, this mirror calculation?
A It likely looks like a reported percent complete coupled with how much time was left in the project.
Q Was it in the form of a chart or a graph?
MS. THOMAS: [Objection]
A My calculation?
Q Yes.
A It was just notes on a piece of paper.
Q So was it handwritten notes or typed notes?
MS. THOMAS: [Objection]
A I believe it was handwritten notes. It could've been typed. I don't know that it matters, but I'm sure it's in my notes.
Q What did you base that calculation on?
A You already figured it out. I based it on the data that I had from the time we started getting data to that point in time, whenever that was. And I looked at an average of progress that was being made. And I just literally extrapolated

that out if we ever don't make anymore improvements and this is what the progress is going to be, this is when we end. So it was -- it seemed similar to what I heard Ken Browne did. So I don't know what Ken Browne did.

Q Was the time period the same -- similar to his, 26 years?

MS. THOMAS: [Objection]

A I don't know.

Q Do you remember what your time period was?

MS. THOMAS: [Objection]

A I think mine said 2038, but subject to check that neck of the woods.

Q Did anyone assist you in making that calculation?

A It was -- no, they did not.

Q Did you provide that calculation to anybody within Santee Cooper, either verbally or in writing?

A Likely so. You'll have to find it in my notes; I'm sure that it was circulated.

Q You think it was circulated to whom?

A To all the members of the Santee Cooper team.

Q So that would have been who?

A That would've been Lonnie -- if it did, I'm not saying that it did, but I'll be surprised if it wasn't in some kind of a document, but we

MS. THOMAS: [Objection]

A Yes, that concerned me.

Q About the middle of the page, it says, "Level D 32 pieces." Do you see that?

A Yes.

Q And then it says, "Gave site control but killed schedule." What did you mean by that?

A I think I'm referring to the CA20 hook date schedule. It's subordinated to that in my notes, and that's the way I do business. So I think I was saying that when we agreed to create this level D site or area on our site to do the work, it did give the control of those now 32 modules to the site, but there wasn't throughput coming through. We weren't getting the modules out of level D in a timely manner and it killed the CA20 hook date schedule.

Q Below that, you say, "It's past time to end the Lake Charles debacle. Submodule deliveries are going to kill the project."

A Right.

Q Why did you think submodule deliveries were going to kill the project?

MS. THOMAS: [Objection]

A Again, it's likely inartful language, but it's the

critical path. These submodules made up the very important parts of the nuclear island. You had to have them. And if -- but, you know, based on what we knew at this point, they were coming at us very slow. And so I couldn't see how you could hold a schedule unless we made improvements down there, so.

Q You said this was inartful language. These are the words you gave to CEO of Santee Cooper as talking points to convey to his counterpart at SCE&G, right?

MS. THOMAS: [Objection]

A Not his counterpart.

Q Okay, well, to Steve Byrne at SCE&G?

A Right. And I'm sure there are probably others on the call as well. I mean, I don't -- it's not listed who was on the call. But I don't recall many occasions where Lonnie called Steve by himself. So it was probably -- and I even see here where it looks like I'm dialing into it, so I think there's a collection of people on the phone.

Q My question is why do you now say this is inartful?

A Well, I'm just -- kill the project. It's -- what I really meant was if you're not getting

Exh. 12

From: Crosby, Michael [michael.crosby@santeecooper.com]

Sent: Wednesday, March 05, 2014 8:51 AM

To: Carter, Lonnie

Cc: CHERRY, WILLIAM

Subject: Steve Byrne Call this afternoon

Lonnie,

Hope all is well on your trip.

I am at the site … but will be dialing in at 4pm this afternoon.

Dial-In number:

- Number: 1-877-635-0568
- Enter Conference Code: 2518413652

Following are a few thoughts for the call.

Yellow highlights are the major talking points … info that follows each highlight … builds the case:

Consortium EM … not engaged … at least not to the point that has produced results for VC Summer.

- **Sep 25 letter quotes**
  - **Commit our support to the Project in achieving the schedule provided herein.**
- **Oct 2 letter quotes**
  - **Consortium is taking additional management measures to add certainty to this schedule.**
  - **Weekly CBI senior management review and monitoring of Lake Charles progress against the plan has been established.**
  - **We commit our support to the Project in achieving the schedules provided herein.**

- **Lake Charles … nothing has changed**
  - **CA20 … hook Jan 24**
    - **It will be a miracle if on hook by Mar 31.**
    - **Level D (32 pieces) – gave site control … but killed schedule**
    - **Chronology of missed CA20 hook dates**
      - **Hook Nov 18, 2011: Original EPC Schedule**
      - **Hook Jan 19, 2013: COL – Settlement Agreement**
      - **Hook Oct 31, 2013: based on Apr 9, 2013 schedule**
      - **Hook Jan 24, 2014: based on Sep 25, letter**
  - **CA01 promised deliveries per Oct 2 letter**
    - **Begin deliveries Nov 3, 2013 … complete by Jul 18, 2014**
    - **To date … 0 of 47 received**

It's past time to end the Lake Charles Debacle.

- **Sub-module deliveries are going to kill the project**
  - **CBI Power (Charlotte) … has proffered a solution**
    - **Seed control of LC to Charlotte (DePierro / Lyash are committed to this)**
  - **Does not have support of The Woodlands ??**

Site Construction Management … does not have proper resources for Module Assembly Building (MAB).

- **EPC signed May 2008 … nearly 6 yrs later … still do not have proper resources to work both ends of building.**
- **If we had CA01 submodules on site now … we could not work them without taking resources away from CA20.**
- **CA01 thru CA05 + CA20 … x 2 = 12 structural modules**
  - **Consortium is assembling them … 1 at a time**
    - **We will never be successful on this plan**

Progress Payments … need to be adjusted for project delays.

- Sep 25 letter - promised to forward plan to levelize cash flow within 60 days
  - Plan never received
  - For info … 2013 Progress Payments = $80,054,940 (100%)

A sad reality …

- Jun 2013: SCE&G announces … 1 year Module Delay
  - 1 year later … if we are lucky … we will have set 1 minimally configured module set on its foundation.

Exh. 13

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-23-06675

Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc.,

Defendants.

Affidavit of
Vincent A. Sheheen

Vincent A. Sheheen, being duly sworn, deposes and says:

1. I am a member of Savage, Royall & Sheheen, LLP in Camden, South Carolina.
2. In August 2017, following announcement of the abandonment by Santee Cooper and SCE&G of the V.C. Summer Nuclear Project, I became involved in planning litigation on behalf of the utilities' customers seeking to recover what they had paid in advance financing charges for the failed project.
3. As part of my early involvement, I approached experienced South Carolina litigation firms with whom I had a relationship to solicit their involvement as additional counsel on behalf of the utility customers.
4. In furtherance of this effort, I approached several fellow lawyers who I knew had significant experience in complex litigation and with whom I had worked before. The lawyers I approached included attorneys who had received multi-million dollar recoveries in class actions and other complex litigation.
5. After I explained the nature of the litigation to these prospects, they declined to become involved, believing that the risk was too great and the prospect of success too remote.
6. Subsequently, I joined in litigation with the firms who ultimately became Class Counsel and who were willing to join my firm in taking on this risk.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 5/14/2020

Vincent A. Sheheen

SWORN to before me this 14th
day of May, 2020

7-3-23

Notary Public for South Carolina

My commission expires: 7-3-23

Exh. 14

$79 million

April 22, 2019

RELATED TOPICS

Medicaid

South Carolina

COLUMBIA, S.C. (AP) — South Carolina has been paid another installment from the settlement nearly all U.S. states signed with the major tobacco companies in 1998.

State Attorney General Alan Wilson said Monday most of the nearly $79 million in the 2019 payment will go to help pay for Medicaid.

Wilson said in a statement that South Carolina has received nearly $1.6 billion over more than two decades from the settlement.

The settlement was made with what were the four major tobacco companies in 1998. It restricted the advertising and marketing of cigarettes and made arrangements for yearly payments to cover health care costs from tobacco use.

Exh. 15

McCULLOUGH • KHAN, LLC
ATTORNEYS AT LAW

Phone: (843) 937-9798
Fax: (843) 937-0706
ross@mklawsc.com

ATTORNEY-CLIENT CONTRACT

The undersigned clients retain and employ the undersigned attorneys at law to represent Chris Kolbe and Ruth Ann Keffer (the "Clients"). This firm will represent Clients, current and former Santee Cooper ratepayers and customers, with respect to claims brought against Santee Cooper and others regarding improper and/or excessive rates and other unlawful charges imposed for various planning, construction, and pre-operational costs associated with the now abandoned nuclear power reactors in Fairfield County, SC.

It is agreed that the undersigned attorneys will undertake a proper investigation of all facts, coordinate witnesses and experts, prepare a demand, and if agreed upon, file an administrative and/or judicial action to seek recovery of the aforementioned rate refunds owed to the Clients as Santee Cooper ratepayers and customers.

For such legal professional services, Clients agree to pay the undersigned attorney and law firm forty percent (40.00%) of whatever is collected of the gross amount of the money recovered for or on behalf of Clients, calculated prior to the deduction of costs in pursuing the action prior to filing an administrative claim or lawsuit and after the commencement of an administrative claim / lawsuit. It is further understood that the attorneys will, on behalf of Clients, advance all costs associated with the preparation and prosecution of these claims. The undersigned attorney and law firm will deduct all costs advanced from the gross amount of recovery for the Clients, following the deduction of the attorney's fees. Should there be no recovery, Clients will have no

obligation to reimburse attorneys for the costs advanced. It is understood the above only includes standard administrative claim and litigation expenses.

It is understood that any contingency fee paid by Clients for such services is entirely contingent upon the attorney making a recovery for and on behalf of Clients of property or money.

The undersigned Clients hereby authorize the attorneys to fully investigate the above matter and should administrative or judicial proceedings be deemed necessary, to fully prepare and prosecute the same.

If after reasonable investigation of such claims the attorneys determine it is not feasible to prosecute the same, then, upon notification to Clients of that fact, it is agreed that the attorney may withdraw from representation under this contract and dismiss the claims, if necessary.

It is further understood and agreed that no party hereto shall settle any claim or claims arising out of the above matter without first having obtained the consent thereto of the other; the attorneys being one party collectively and Clients being the other.

The undersigned Clients further agree that from the proceeds of any recovery, whether by settlement, judgment, or otherwise, the attorneys may deduct the aforesaid attorney fees to which said attorney is entitled, together with all costs and expenses which remain unpaid, and Clients further agree that the attorneys may deduct the amount of all unpaid bills, making disbursements of such funds directly to the company or person concerned.

Finally, it has been explained that many other Santee Cooper ratepayers and customers may have similar claims for rate refunds. This law firm represents and/or plans to represent other such property owners in addition to Clients. Clients consent to this firm representing other similarly situated ratepayers, consents to a class of such ratepayers being formed should this be

deemed necessary and advisable by the undersigned attorneys and firm, and agree to participate in this class both as a class member and as a class representative in the event a class is formed. Clients further consent to McCullough Khan, LLC associating with the law firm of McGowan, Hood & Felder, LLC to handle the class action aspects of this case. The Clients further consent to an attorney's fee split between McCullough Khan, LLC and McGowan, Hood & Felder, LLC pursuant to a separate agreement between said firms. Finally, should this case proceed as a class action case and in the event of a settlement or recoverable judgment, the attorneys' fees and costs due and payable by the Clients and other class members will be governed by order of the Court and not this Agreement.

I HAVE READ AND UNDERSTAND THIS CONTRACT AND AGREE TO ALL ITS TERMS.

This 24 day of August, 2017.

CLIENTS

Chris Kolbe

Ruth Ann Keffer

ATTORNEYS

McCullough Khan, LLC

Ross A. Appel, Esq.

SPEIGHTS & SOLOMONS, LLC
Post Office Box 685, 100 Oak Street East, Hampton, SC 29924
(803) 943-4444; Fax (803) 943-4599

CONTRACT OF REPRESENTATION

The undersigned, Jessica S. Cook *(hereinafter "Client") hereby employs and retains the A. G. Solomons, III (hereinafter "Lawyer") to represent its interest against who may be liable for the damages suffered by the Client as a result of* abandonment of V.C. Summer project and costs associated. *Client further authorizes Lawyer to employ such additional attorneys or experts as are deemed necessary to fully represent Client's interest.*

Client hereby agrees to pay Lawyer an attorney's fee equal to one-third (33.333%) of any settlement, verdict, and/or recovery obtained in its case. Client further agrees to pay any and all litigation expenses out of any settlement, which include by explanation, but not limitation, filing fees, service fees, witness fees, expert witness fees, investigation expenses, photographs, photo reproduction expenses, and travel expenses.

Lawyer agrees not to enter into any final settlement or compromise of this matter without the prior consent of Client.

Client agrees with Lawyer not to make any settlement or take part in any settlement negotiations without prior written permission of Lawyer in accordance with this agreement.

Client empowers Lawyer to take all steps in said matter deemed by Lawyer to be advisable. Client agrees that if, after the investigation of Client's claim, it appears not to have merit, then Lawyer shall have the right to cancel this Agreement.

Client understands that this action may involve a class action with multiple clients with similar claims and Lawyer has explained that fact to the client. That explanation included a discussion concerning conflicts of interest and resulted in an affirmation that there is no known conflict between represented Plaintiffs.

CLIENT ACKNOWLEDGES THAT LAWYER HAS MADE NO GUARANTY REGARDING THE SUCCESSFUL TERMINATION OF CLIENT'S CLAIM AND THAT ALL EXPRESSIONS RELATIVE THERETO ARE MATTERS OF OPINION ONLY.

We do hereby bind our assigns and legal representatives to the terms and conditions as set forth herein.

WE HAVE READ OVER AND FULLY UNDERSTAND THE ABOVE CONTRACT, AND HAVE FULLY DISCUSSED THE TERMS AND CONDITIONS THEREOF AND WE DO HEREBY SET OUR HANDS AND SEALS THIS 13th *DAY OF* February *2018.*

By: CLIENT

Jessica S. Cook

_____

By: A.G. Solomons, III

_____

Witness: _____

Exh. 16

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	CASE NO. 2019-CP-23-06675 **Affidavit of** **Anne McGinness Kearse**

Anne McGinness Kearse, being duly sworn, deposed and says:

1. I am a member of Motley Rice, LLC and a licensed member of the Bar in South Carolina, West Virginia, and the District of Columbia. I have also been admitted to practice before a number of United States District Courts. I graduated *summa cum laude* from the University of South Carolina School of Law in 1998. My practice concentrates on complex litigation, toxic exposures, personal injury, and wrongful death.

2. During my career, I have received a number of honors and awards, including the following:

   2020 – South Carolina Lawyers Weekly "Lawyer of the Year"

   2018 – University of South Carolina School of Law Alumni Association "Compleat Lawyer Award"

   2016 – Best Lawyers Charleston, SC "Lawyer of the Year – Mass Tort Litigation / Class Actions – Plaintiffs"

   2014 – Benchmark Plaintiff "Top 150 Women in Litigation: South Carolina"

   2013-2020 – "South Carolina Super Lawyers List"

   2010 – National Trial Lawyers "Top 100 Trial Lawyers: South Carolina"

3. Prior to becoming a member of the Bar, I served as a law clerk supporting the efforts of the national team of lawyers representing the State Attorneys General in the historic lawsuit against Big Tobacco, which resulted in the largest civil settlement in U.S. history. I was also a member of the trial team that litigated *Falise v. American Tobacco Company* (E.D.N.Y.).

4. I have over twenty (20) years of complex civil litigation experience in State and Federal Courts. Complex litigation often involves multiple parties, multiple attorneys,

numerous expert witnesses, procedural and legal complexities, requisites of class action certification, extensive and expensive discovery, complex damages determination, lengthy trials, and a significant amount of money at stake. I have been involved in numerous litigations that deal with these complex issues. They include trying to verdict a 2002 West Virginia Mass Consolidated Liability Trial that involved claims by thousands of plaintiffs and held Union Carbide liable for unsafe working conditions at plants throughout the state. I was also trial counsel in *Cox v. A&I Co.*, which was West Virginia's first household asbestos exposure case and held DuPont liable for disease that resulted not from working with or near asbestos but by virtue of living in a household with someone who did. I also represent ten (10) Provincial Canadian Workers Compensation Boards in United States courts to recoup benefits paid by the Compensation Boards to Canadian asbestos victims.

5. Much of the litigation in which I have been involved is cutting-edge litigation. Most recently, I have been involved as a member of my firm's litigation team to represent numerous states, cities, towns, counties, and townships targeting the alleged misrepresentation of highly addictive opioids by manufacturers and distributors. *In re: Nat'l Prescription Opiate Litig* MDL 2804 (No. 1:17-md-2804 N.D. Ohio); *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362 (S.D. W. Va.) (co-lead counsel). This ongoing litigation is one of the most complex series of lawsuits in the country today. I was an integral part of the legal team that brought about novel legal theories and litigation on behalf of victims of the September 11, 2001 terrorist attacks. I have also represented and secured settlements for workers in the flavoring industry who suffered respiratory ailments caused by exposure to toxic chemicals and continue

to represent others with life altering catastrophic injuries resulting from defective products or unsafe working conditions. These cases are often highly contested and involve complex products liability and causation issues.

6. I have published a number of articles on major legal issues, including forum non conveniens, defective products abroad, corporate misconduct, and mass tort litigation. I am the co-author of Chapter 12 in the book, Pathology of Asbestos-Associated Diseases, edited by Victor L. Roggli, M.D., et al. This publication is a comprehensive asbestos reference book used by both physicians and attorneys.

7. I also devote time to public interest and public health organizations including the Public Justice Foundation, where I served as the President from 2016-2017; Safe Kids USA, where I served on the Executive Board in 2011; and the American Public Health Association, where I serve as a Section Councilor in the Law Section.

8. I am personally familiar with the work of several of the attorneys involved in this case. In the 1980s, I worked with attorneys Dan Speights and Ed Westbrook on asbestos property damage cases, including the landmark case of *City of Greenville v. W.R. Grace & Co.*, 640 F. Supp. 559 (D.S.C. 1986), *aff'd*, 827 F.2d 975 (4th Cir. 1987), *reh'g denied*, 840 F.2d 219 (1988), the first successful asbestos property damage verdict in the country. I also worked with Terry Richardson and know him to be an all-around excellent attorney, universally respected by his peers.

9. As my practice involves complex litigation, I have developed a good appreciation for the time and effort required to successfully prosecute such cases. They require a higher level of skill and, often, more intense effort than more routine litigation, even that of significant size. For while the size of a case may make it important to the parties, the

difficulty of the issues involved and the effort needed to resolve those issues is often multiplied exponentially in cutting edge areas of the law.

10. This case epitomizes the very nature of complex high stakes litigation. The case was highly contested and involved significant motion practice dealing with procedural and legal complexities, state and federal court practice, class action certification, extensive and expensive discovery, and complicated damages. Class Counsel's efforts against those involved in the V.C. Summer Nuclear Project expansion fall well within the realm of extraordinary litigation effort, whether it be deemed "novel," "cutting edge," "path-breaking," or a similar, laudatory label. With a vigorous defense and through the twists and turns of the litigation, it was the perseverance of Class Counsel that was crucial to a successful resolution. Simply put, cases like this can be handled competently by only a select few lawyers. These lawyers must not only have the experience, tenacity, and energy to pursue the cases, but also the financial resources to see a multi-year, seven-figure battle through to conclusion.

11. The importance of Class Counsel's ability to finance the litigation effort cannot be overstated. Defendants and their counsel are well aware of who can and who cannot sustain a multi-year effort against them. Lawyers get reputations either as lawyers who will "go the distance" for their clients or lawyers who are likely to settle as soon as the opportunity arises for less than the maximum that could potentially be achieved. The Class here is well represented by lawyers who are known to go the distance for their clients.

12. As noted, I personally have experience with some of these lawyers who will "go the distance." I worked with Class Counsel, Edward Westbrook, when he was lead counsel

on behalf of the Manville Trust against the tobacco companies in *Falise v. Am. Tobacco Co.*, 94 F. Supp. 2d 316 (E.D.N.Y. 2000). That case, which was tried in Brooklyn over several months in 2000 was a marathon effort involving nearly 24-hour work on behalf of Mr. Westbrook, myself, and a team of lawyers. The case eventually resulted in a mistrial when, in true Brooklyn fashion, one of the jurors threatened to stab another juror during deliberations. In that case, Mr. Westbrook, as lead counsel, was opposed by teams of lawyers for the tobacco companies who filed motions almost daily during the trial, often resulting in hearings by the presiding judge (Jack Weinstein) at 7:00 a.m.

13. I am familiar with contingency fees in complex litigation, including class actions. From my experience over the years, I can say without hesitation that a 15% contingency fee in a case of this extraordinary difficulty is at the bare minimum, if not below, the reasonable range of fees for such an effort. Every day, lawyers across the country are receiving one-third contingency fees in cases that are much less complex and difficult than the one these Class Counsel undertook.

14. My firm, like many of the Class Counsel firms, operates primarily on a contingency fee basis. This contingency fee system, unique to American jurisprudence, requires that ample fees be awarded in successful cases so that Plaintiffs' lawyers will have the resources and incentive to undertake risky cases where losses result in no fee and loss of expense money advanced as well. Without the incentive of the contingency fee system, it would be economically unfeasible for experienced counsel to represent impecunious plaintiffs against major companies who have large amounts of money to spend in their defense. Contingency fees even the playing field by allowing Plaintiffs' lawyers to spend what is necessary to sustain an often-extended discovery effort to root

out relevant evidence and prepare it for trial where a plaintiff without means can present his or her case to a jury on an equal footing with well-to-do corporations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 22, 2020

Anne McGinness Kearse

SWORN to before me this 22

day of May, 2020

Kaitlyn Nobles

Notary Public for South Carolina

My commission expires: 7/11/2029

CURRICULUM VITAE OF ANNE MCGINNESS KEARSE

CONTACT INFORMATION

Anne McGinness Kearse
Attorney at Law
Motley Rice LLC
28 Bridgeside Blvd
Mt. Pleasant, South Carolina 29464
Tel: 843.216.9140
akearse@motleyrice.com

EDUCATION

University of South Carolina School of Law, Juris Doctor, *summa cum laude*, 1998
Syracuse University, Bachelor of Science, College of Human Development, Consumer Studies, 1983

BAR ADMISSIONS

South Carolina 1998
District of Columbia 2013
West Virginia 2014

ADMITTED TO PRACTICE

District Court for the Eastern District of New York; Eastern and Western Districts of Pennsylvania; Northern District of Ohio; District of South Carolina; Northern and the Southern Districts of West Virginia; Foreign Legal Counsel, Ontario, Canada.

EMPLOYMENT

Motley Rice LLC, Managing Member and Executive Committee (2003- present)
Ness, Motley, Loadholt, Richardson and Poole, Associate (1998 – 2003)

Over twenty years of complex litigation practice in State and Federal Courts. The firm is one of the nation's largest plaintiffs' litigation firms specializing in complex trial litigation, negotiations, and consultation. Motley Rice has a long history of pursuing "impact" litigation including in the areas of environmental contamination; governmental public client; securities and consumer fraud; antitrust, occupational disease and toxic tort; medical drugs and devices; anti-terrorism and human rights violations; aviation disasters and passenger rights; and catastrophic personal injury. Motley Rice LLC is comprised of 141 licensed attorneys, 195 legal support staff, and 51 other support staff who possess

extensive experience in litigating and successfully trying a wide variety of high-stakes cases. Headquarters for Motley Rice are in Mount Pleasant, SC with offices located in WV, RI, CT, NY, LA, MO, NJ, PA, and Washington, DC.

LITIGATION FOCUS AND REPRESENTATIONS:

- Member of the firm's litigation team currently representing dozens of states, cities, towns, counties and townships in the National Opioid Litigation. Co-lead trial counsel in *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362 (S.D. W. Va.). Scheduled to begin trial August 31, 2020.
- Occupational and toxic exposure working to implement better safety practices and corporate governance measures; Plaintiffs Liaison Counsel and Trial Counsel for West Virginia Mass Litigation Panel – Asbestos Docket since 2004 (comprising of 4-6 consolidated trial groups per year).
- Trial counsel for workers and families diagnosed with mesothelioma and other diseases caused by toxic asbestos exposure in the chemical, electric power generation, steel or construction industries.
- Products Liability Litigation – personal injuries and wrongful death resulting from unreasonably dangerous products due to defective design, manufacture or failing to provide adequate warnings.
- Represents Canadian Workers' Compensation Boards in U.S. courts to recoup benefits they paid Canadian asbestos victims.
- Practice areas include Asbestos Exposure, Chemical and Toxic Exposure, Occupational Disease, National Prescription Opioid Litigation, Tobacco Litigation, Products Liability, Catastrophic Personal Injury & Wrongful Death, Worker Health & Safety, Environmental, and Mass Torts.

OTHER EXPERIENCES

- Past President (2016-2017) and Board of Directors, Public Justice Foundation, a national nonprofit legal advocacy organization to protect consumers, employees, civil rights & the environment.
- American Public Health Association, Section Councilor in the Law Section (2018 – present)
- Past Chair and Executive Committee, Section on Toxic, Environmental, And Pharmaceutical Torts (STEP); Chair – Committee of Asbestos Education; Member of the American Association for Justice,
- Board of Governors, South Carolina Association of Justice (2010 – present)

AWARDS AND ACCOLADES

- **Best Lawyers®**
  2011–2020 Mass tort litigation/class actions – plaintiffs
  2016 Charleston, S.C. "Lawyer of the Year": Mass tort litigation/class actions – plaintiffs
- ***South Carolina Lawyers Weekly***
  2020 Lawyer of the Year
- **Lawdragon**
  2020 Lawdragon 500 Plaintiff Consumer Lawyers

- **Super Lawyers®**
  2013–2019 *South Carolina Super Lawyers* list
  Class action/mass torts: Plaintiff; Personal injury – general: plaintiff; Personal injury – products: plaintiff
- **The Legal 500 United States**
  2007, 2009–2012, 2016, 2018 Dispute resolution – product liability, mass tort and class action – toxic tort – plaintiff
- **University of South Carolina School of Law Alumni Association**
  2018 Compleat Lawyer Award (outstanding civic and professional accomplishments)
  1998 Bronze Compleat Award
- **The National Trial Lawyers**
  2010 Top 100 Trial Lawyers™: South Carolina
- **Benchmark Plaintiff**
  2014 Top 150 Women in Litigation list: South Carolina: mass tort/product liability – plaintiffs
  2012–2014 South Carolina "Litigation Star": mass tort/product liability – plaintiffs
  2013 National "Litigation Star": mass tort/product liability – plaintiffs

ASSOCIATIONS

- American Bar Association
- South Carolina Bar Association
- Charleston County Bar Association
- West Virginia Bar Association
- American Association of Justice
- South Carolina Association for Justice, Board of Governors and past president (2016-2017)
- Order of the Coif
- Order of the Wig and Robe
- John Belton O'Neal Inn of Court
- Litigation Counsel of America Trial Lawyer Honorary Society
- Inn of Court American Inns of Court, James L. Petigru Chapter

PUBLICATIONS

- "Medicolegal Aspects of Asbestos-Related Diseases: A Plaintiff's Attorney's Perspective" Motley, Ronald & Kearse, Anne & Straus, Alex. (2014). 10.1007/978-3-642-41193-9_12.
- "Medicolegal Aspects of Asbestos-Related Disease: A Plaintiff's Attorney's Perspective in Roggli, et al. (Motley, Patrick and Kearse, *Pathology of Asbestos-Associated Diseases, 2nd Edition*, 2004)
- "Household Asbestos Exposure Cases: Innocent Victims" (*SC Trial Lawyer*, Fall 200
- "Decades of Deception: Secrets of Lead, Asbestos and Tobacco" (*Trial Magazine*, Oct. 1999)
- Comment, "Forfeiting the Home-Court Advantage: The Federal Doctrine of *Forum Non Conveniens*" (49 *S.C. Law Rev.*1303, Summer 1998)
- "The Consolidation Experience - Managing Asbestos Litigation" (Unpublished manuscript, on file with the author)

NOTABLE CASES

Complex Litigation

- *In re Nat'l Prescription Opiate Litig.*MDL 2804, (N.D. Ohio Mar. 19, 2019) ("MDL 2804 Case No. 1:17-md-2804 (current))
- Plaintiff's Lead Counsel *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362 (S.D. W. Va.) (bellwether scheduled to begin trial August 2020)
- Plaintiff's Counsel -West Virginia Mass Litigation Panel (MPL) - *Kanawha Co. Civil Action 19-C-9000*
- Member of Plaintiff's Leadership Counsel *Delaware County, Pennsylvania v. Purdue Pharma L.P., et al.*, Del. Co. Comm. Pl., Civil Action No. 2017-008095
- In Re: Nylaan Litigation, No. 17-10716-CZ (MI Cir. Ct. Kent County 2017) (PFAS environmental contamination)
- Trial team counsel in *Falise v. American Tobacco Co.*, 94 F. Supp. 2d 316 (E.D.N.Y. 2000) tried before Judge Weinstein the Southern District of New York. 2001
- Trial counsel in *Cox v. E.I. du Pont de Nemours & Co.*, (W. Va. Cir. Ct., Kanawha County, 2002). DuPont held liable for exposing a household member to asbestos fibers from the clothing of an asbestos worker.)
- Plaintiffs' co-liaison counsel and trial counsel for In the Circuit Court of Kanawha County, West Virginia In Re: Asbestos Trial Group Civil Action No.: 01-C-9004 the 2002 West Virginia Mass Consolidated Asbestos Trial and verdict resolving over 8,000 West Virginia asbestos cases.
- Litigation team member for 9/11 against al Qaeda's financiers, *In re Thomas E. Burnett, Sr., et al. v. Al Baraka Inv. & Dev.Corp., et al.*, No. 03-CV-9849 (S.D.N.Y. 2003); *In re Terrorist Attacks on September 11, 2001*, No.03-MDL-1570 (S.D.N.Y. 2003), a landmark lawsuit against the alleged sponsors of al Qaeda and Osama bin Laden.
- Litigation team for *In Re: Charleston Firefighter Litig.*, No. 07-CP-10-3186 (S.C. Ct. Comm. Pl., 9th Jud. Cir. 2007)
- *California State Teachers' Ret. Sys. v. Blankenship*, No. 10-C-715 (W. Va. Cir. Ct.) (regarding Massey Energy Co. shareholder derivative action)
- *Wise v. Travelers Indem. Co., 192 F. Supp. 2d 506 (N.D.W.Va 2002)*(Insurance bad faith and Unfair Practices)
- *Akins, et.al. v. Babcock and Wilcox Power Generation* US DS Western District of Pennsylvania Case No: 2:10 – cv-00143-DSC-RCM

Brain and Spinal Injuries

- *Hoover, et al. v. NFL, et al.*, MDL #2:12-cv-05209-AB (E.D. Pa. 2012) (concussion related brain injury).
- *Strother v. John Wieland Homes and Neighborhoods of the Carolinas, et al.*, No. 09-CP-29-1783 (S.C. Ct. Comm. Pl., 6th Jud. Cir. 2009) (drowning related brain injury).
- *Chesnut v. Waupaca Elevator Co., Inc., et al.*, No. 2013-CP-10-2060 (S.C. Ct. Comm. Pl., 9th Jud. Cir. 2013) (defective elevator related brain and personal injury).
- *Tario v. SOCO, Holding, LLC et al.*, No. 2013-cp-26-2499 (S.C. Ct. Comm. Pl., 15th Jud. Cir. 2013) (diving related paraplegia).
- *Ruetschle v. BMW Mfg., et al.*, No. 11-CP-42-0568 (S.C. Ct. Comm. Pl., 7th Jud Cir. 2011) (Motorcycle and inadequate training resulting in quadriplegia from motorcycle accident).

- *Edmondson et al. v. Holiday Inn Express, et al.*, No. 12-C-579, No. 12-C-579 (W.Va. 13th Jud. Dist. Cir. Ct. Kanawha County 2015) (carbon monoxide related brain injury from defective pool heater).

Fires and Severe Burns

- *Satterfield et al. v. Napa Home & Garden Inc., et al.*, No. 7:11-1514-JMC (D.S.C. 2011) (defective product causing severe burn injuries).
- *In re: Charleston Firefighter Litig.* No. 07-CP-10-3186 (S.C. Ct. Comm. Pl., 9th Jud. Cir. 2007) (consolidated complex wrongful death litigation involving the families of nine firefighters who died in a furniture store fire).
- *Cantrell v. Gen. Sec., Inc., et al.,* No. 5:16-cv-00374-D (E.D.N.C. 2016) (defective monitoring system causing home fire resulting in the death of husband and two daughters)

Chemical and Toxic Exposure

- *Tucker et al v. Momentive Performance Materials USA, Inc. et al 2:13-cv-04480* (2017 S.D.W.V 2017) (chemical exposure from chlorine plant resulting in bronchiolitis obliterans and lung transplant)
- *In re Graniteville Train Derailment*, No. 2006-CP-02-1032 (S.C. Ct. Comm. Pl., 2nd Jud. Cir. 2006) served in a leadership role for both individual and class action cases in connection with the January 2005 railroad derailment and chemical spill in Graniteville, S.C.
- *In re Welding Fume Prod. Liab. Litig.*, No. 1:03-CV-17000, MDL No. 1535 (N.D. Ohio 2003);
- *McMunn, et al. v. Babcock & Wilcox Power Generation Grp., Inc., e*2:10-cv-00143-DSC-RCM (W.D. Pa. 2010) (excessive radiation emissions and personal injury).
- *Wynne v. W.M. Barr Co.*, et al., No.: 2:18-cv-2203-DCN (D.S.C. 2018) (methylene chloride wrongful death).

Wrongful Death

- *Priester v. Futuramic Tool & Eng'g Co.*, No. 2:14-cv-01108-DCN (D.S.C. 2017) ($8.8 million verdict wrongful death/survival verdict).
- *Estate of Justin Miller v. Beaufort County, et al.*, No. 2012-CP-07-03782 (S.C. Ct. Comm. Pl., 14th Jud. Dist. 2012) (inadequate supervision resulting in stolen firetruck and wrongful death).
- *Holst v. KCI Konecranes Int'l Corp. et al.*, No. 05-CP-10-705 (S.C. Ct. Comm. Pl., 9th Jud. Cir. 2005) (premises liability wrongful death).
- *Sparks v. Oxy-Health, LLC et al.*, No. BC510656 (Cal. Sup. Ct., Los Angeles County) (defective product).
- *MacQueen v. USPC, Inc.* No. 05-VS-077739 B (Ga. St. Ct., Fulton County 2005) (motorcycle wrongful death by UPS driver).

SPEAKING ENGAGEMENTS

- Frequent national and international speaker on asbestos litigation, general product liability, worker health and safety, consumer fraud, legal ethics and tort reform.

"The Most Complicated Litigation in History (Opioid Litigation)" Tactix Co-Counsel Seminar Charleston, SC October 2019

"Responding to the National Opioid Crisis" American Bar Association, Health Law Section and Senior Lawyer Division, San Francisco California August 2019

"You Cannot Succeed In a Negotiation Seeking a Maximum Result Without Knowing, Understanding, & Appreciating the Wants, Needs, Desires, & Goals of Your Opponent" Connectionology's First Annual Retreat & Strategy Think Tank Charleston, SC October 2018

"Worker Legal Rights & Occupational Health – Remedies Beyond Worker's Compensation" National COSH Conference 2018 Linthicum Heights, Maryland December 2018

"Worker Safety, Chemicals and Occupational Disease: New Concerns" Tactix 2017, Charleston, SC March 2017

"**Dangers of Artificial Flavoring Chemicals"** National Construction Occupational Safety and Health (COSH) Conference Baltimore, MD, December 2016

"**Section on Toxic, Environmental, and Pharmaceutical Torts (STEP)** Panel AAJ Annual Convention Los Angeles, CA July 2016

HarrisMartin's Asbestos Litigation Conference State of Asbestos National Litigation Charleston, SC May 2016

"Impact of Bankruptcies on Litigation Strategies" Perrin Asbestos Litigation Conference A National Overview & Outlook San Francisco, CA September 2015

"Past, Present and Future Representation of the Canadian Worker's Compensation Boards" 2015 WCB Lawyers Conference Banff, Alberta, CA August 2015

"**Pre-emption, Spoliation and Creative Litigation"** Moderator AAJ Annual Convention Montreal, Canada, July 2015

"The Bankruptcy Trust Offset: What is it and should it be Applied in a Civil Case?" Cutting-Edge Issues in Asbestos Litigation Conference, Perrin Conferences, Beverly Hills, CA March 2015

"Ethics: Product Identification in Asbestos Litigation" Asbestos Litigation Conference: A National Overview & Outlook Perrin Conferences San Francisco, CA September 2014

"Ethics Opinions and Discovery Abuse in Asbestos Litigation" Cutting-Edge Issues in Asbestos Litigation Conference Perrin Conferences Beverly Hills, CA, March 2014

"New Defendants and Premises" and **"Picking Your Battles/Defendants Based on Exposure"** Motley Rice Co-Counsel Seminar Mt. Pleasant, SC, September 2013

"Dose Reconstruction in the Age of Multiple Exposures" Asbestos Litigation Conference: A National Overview & Outlook Perrin Conferences, San Francisco, CA September 2013

"Asbestos Litigation in 2013 and Beyond" American Association of Justice (AAJ) 2013 Annual Convention San Francisco, CA July 2013

"How will Courts Rule on the Single/Every Fiber or Low Dose Exposure Theory" Cutting-Edge Issues in Asbestos Litigation Conference, Perrin Conference Beverly Hills, CA March 3013

An International Meeting on Climate, the Workplace and the Lungs Occupational Health and Workmen's Compensation, Maulana Azad Medical College, New Delhi, India December 2012

"The Latest Advancements in Asbestos Medicine" Asbestos Litigation Conference: A National Overview & Outlook, Perrin Conferences, San Francisco, CA September 2012

"Modern Day Asbestos Litigation" Moderator, AAJ 2012 Annual Convention, Chicago, IL July 2012

"Facing Corporate Counsel and Toxic Torts and Environmental Practitioners Mock Trial of a Toxic Tort Case" 21st Annual Spring CLE Meeting: Scorching In the Desert: Hot Topics, Phoenix, AZ March 2012

"Women's Breakfast Roundtable: The Judges Perspective–Women in the Judiciary System"–Moderator Cutting-Edge Issues in Asbestos Litigation Conference Perrin Conferences San Francisco, CA March 2012

Asbestos: Documenting Exposures: Past, Present and Future, Local 95 Toronto, Ontario January 2012

"The Latest Advancement in Asbestos Medicine" Moderator Asbestos Litigation Conference: A National Overview and Outlook Perrin Conference September 2012

"**Asbestos: Past Present and Future"** New Brunswick Building Trades Council Presentation St. Johns, New Brunswick, Canada August 2011

"**Litigating Burn Pit Cases"** Section on Toxic, Environmental, And Pharmaceutical Torts (STEP) AAJ 2011 Annual Convention July 2011

"Ethical Issues to Consider in Connection with the Potential" "Impact of Bankruptcy Claims on Litigation and Trial" Ethics Part 2, Plaintiff's Asbestos Litigation (PALS) Convention May 2011

2011 Canadian Legislative Conference, Building and Construction Trades Department, AFL-CIO, Delta Ottawa City Centre May 2011

"2011 Judicial Roundtable on Asbestos Litigation: A View from the Bench" Moderator Cutting-Edge Issues in Asbestos Litigation Conference, Perrin Conferences, San Francisco, CA March 2011

"**An In-House Perspective on Premises Liability"** Asbestos Litigation Conference: A National Overview & Outlook, Perrin Conferences, San Francisco, CA September 2010

"**The Green Litigator's Toolbox: A Panel Discussion"** Environmental Law and Toxic Tort Seminar, SCAJ Annual Convention, Hilton Head, SC August 2010

"Leading Plaintiff Counsel Perspectives on Litigating Asbestos Claims" ACI Litigating and Managing Asbestos Claims, The Union League, Philadelphia, PA May 2010

Chair, Cutting-Edge Issues in Asbestos Litigation Conference, Beverly Hills, CA February 2010

"**Emerging Trends in Asbestos Litigation"** HB Litigation Conference, Beverly Hills, CA March 2009

"Building and Construction Trades Council of Ontario" Ontario Building Trades Convention, Ottawa, Canada October 2009

"Current Trends in Asbestos Litigation "The Beat Goes On" October 2008

"Household Exposure, Premise Liability & Public Nuisance" Guest Lecturer, College of Charleston Property Law Class, Professor Will Cook, Charleston, SC February 2008

"Premise Liability and Household Exposure" Motley Rice Co-Counsel Seminar Charleston, SC November 2007

"**Cross-Border Class Action – Partnership for Success"** Canadian Caucus Education Program, 2007 AAJ Convention, Chicago, IL July 2007

"Class Action Fairness Act", "Venue in West Virginia", "Mass Torts, Asbestos & Medical Monitoring" West Virginia Judicial Conference, New Martinsburg, WV May 2007

"Asbestos Litigation in the 21st Century Friction Products and Electrical Equipment Litigation" Ali-Aba Asbestos Seminar New Orleans, LA November 2006

"Looks Can Be Deceiving: Non-Traditional Jobsite Defendants" October 2006

"Lessons Learned in the Landmark Rhode Island Lead Trial- Impact on Future Environmental Litigation" October 2006

"Asbestos Trade Association Liability" Motley Rice University September 2006

"GE – We bring *not so* good things to life" PALS Seminar, Orlando, FL May 2006

"Catastrophic Injury Emergency Response Legal Team" Motley Rice Co-Counsel Seminar, Charleston, SC October 2005

"Catastrophic Injury Litigation" Charleston Association of Legal Assistants July 2005

"Allocation of Liability Panel" Mealey's Asbestos Premises Liability Conference Pasadena, CA December 2004

"Suing for Safety", "Household Asbestos Exposure Cases: Innocent Victims", "Emerging Focus of Asbestos Litigation" Motley Rice Co-Counsel Seminar Charleston, SC October 2004

"Household Exposure Cases: Successfully Overcoming Challenges" PALS Seminar Orlando, FL May 2004

"Valuing Justice: Closing Argument from the Plaintiff's Perspective" DRI Damages Seminar, Las Vegas, Nevada March 2004

"Tort Reform Efforts" Mealey's Asbestos Premises Liability Conference, San Francisco, California December 2003

"Villains of the Valley" The DuPont and Union Carbide Disasters, Motley Rice LLC Co-Counsel Seminar, Charleston, South Carolina August 2003

"Villains of the Valley" The DuPont and Union Carbide Disasters PALS Asbestos Litigation Seminar, Ft. Lauderdale, Florida May 2003

"Justice Does Prevail in West Virginia" American Conference Institute, 4th National Forum Asbestos Litigation, The New Wave, San Francisco, California March 2003

"Managing Asbestos Litigation: The Consolidation Experience" Asbestos Docket Management Symposium, Indianapolis, Indiana February 2003

"Asbestos - Bad Faith" Mealey's Litigation Seminar Philadelphia, Pennsylvania May 2002

"**Damages**" DRI - Defense Research Institute March 2000

"Lead - Future Litigation Perspective and Possible Environmental Industry Impact" SC/EIA South Carolina Chapter of the Environmental Information Association, Inc., Columbia, South Carolina August 1999

Exh. 17

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc.,

Defendants.

CASE NO. 2019-CP-23-06675

AFFIDAVIT OF THOMAS H. POPE III IN SUPPORT OF CLASS COUNSELS' PETITION FOR FEES AND COSTS

I. BACKGROUND AND QUALIFICATIONS

1. I am the senior member of the law firm of Pope Parker Jenkins, P.A. (formerly Pope & Hudgens, P.A.), where I have practiced since 1977. I have been a member of the South Carolina Bar since November 1974.

2. After graduating from the University of South Carolina Law School in 1974, I worked as an associate in the law firm of Glenn, Porter & Sullivan, a boutique litigation firm in Columbia, South Carolina.

3. Since, 1974, my practice has focused almost exclusively on litigation. I estimate that I have tried over 100 cases to conclusion, whether by jury verdict or non-jury. I have handled many appeals in state and federal matters. I have represented a mixture of plaintiffs and defendants, although my primary practice has been representing plaintiffs. I have handled a wide array of cases including products liability, breach of fiduciary duty, class actions, automobile and truck collisions, minority shareholder oppression, professional negligence, will contests, employment disputes (wrongful discharge and discrimination), antitrust litigation, land condemnations and eminent domain, nursing home negligence, aviation, and environmental pollution. Trials of these matters have lasted anywhere from two days to four weeks. I estimate that I have tried at least 20 cases lasting a week or more. Many of these cases involved thousands of pages of documents and included complex legal and factual issues. I have also represented a number of lawyers in disciplinary matters and am very familiar with South Carolina's Rules of Professional Conduct governing members of the Bar.

4. I have been involved in a number of class action cases. The following is a description of my involvement and the nature of these cases:

(a) **Johnson v. First Family Financial Services, Inc. – Case No. 96-CP-36-115**
(Newberry County Court of Common Pleas)
I was co-counsel for the defendant in this action brought under the Attorney Preference Statute. The class was certified and ultimately the case settled in September 2003.

(b) **Anderson Memorial Hospital v. W.R. Grace & Co. – Case No. 92-CP-25-279**
(Hampton County Court of Common Pleas)
I provided an expert opinion on the issue of adequacy of counsel. The circuit court entered an order granting plaintiff's motion to certify the class in June 2001. The case alleged property damage due to asbestos, and involved a class comprised of building owners.

(c) **(caption not found)**
In the 1980's, our firm defended a Georgia law firm in federal court in a purported class action involving alleged securities claims. The putative plaintiff class was a group of bondholders. After our firm successfully opposed the motion to certify the class, the case ended. Our files on this matter have since been destroyed.

(d) **Raiden v. Felton Bank – Case No. 6:99-3222-24**
U.S. District Court for the District of South Carolina – Greenville Division
I represented the defendant bank. The case ended after the court granted our motion for summary judgment in favor of my client.

(e) **Fairey v. Exxon – Case No. 94-CP-38-118**
This case involved claims against Exxon for pollution damage caused by underground storage tanks on the properties of class members. I was appointed by Judge Diane Goodstein and served as Guardian Ad Litem for the adjacent property owners to ensure that the settlement was fair to them. In the Final Approval Order, Judge Goodstein determined the settlement ($30M) to be fair and approved attorney's fees for class counsel of 40% of the common fund ($12M), plus costs expended.

(f) **Teresa Childers v. Century United Life Ins. Co. – Case No. 7:06-cv-03914-GRA**
In this class action case, I represented the plaintiff class members, who alleged breach of contract due to defendant's failure to pay benefits under cancer insurance policies. The case was certified and settled in the Fall of 2008.

(g) **Cathy A. Mitchell v. Conseco Life Insurance - Case No. 8:12-cv-00548-TMC**
In this case, our firm was co-counsel representing a plaintiff who had been denied benefits under her cancer policy. She sought to bring the action on behalf of the class, but the court denied our motion for certification in 2013 (the plaintiff's individual claim was later settled in mediation for approximately $135,000 after the certification motion was denied).

(h) **Carroll Thompson v. GAF Materials Corporation**
Case No. 8:11-cv-983-JMC; Case No. 8:11-mn-02000-JMC
In this case, I worked as co-lead counsel with Speights & Solomons on behalf of the "Mobile Class," which consisted of all property owners with defective GAF roofing shingles in the southeastern states. The case settled in June 2015 after almost 10 years of litigation. The case involved extensive document production issues, several dozen depositions across multiple states, and, for the last 12-15 months of the case, reached a pre-trial intensity due to lengthy depositions and motions practice that precluded me from taking on new cases with significant potential for lucrative fees. The GAF case was far less complicated than the instant case, but it was defended by two of the country's most prominent firms.

(i) **KBC Asset Management NV v. 3D Systems – Case No. 0:15-cv-02393-MGL**
In late 2017, I was retained as coverage counsel for the defendant in this securities class action case. I did not make a formal appearance as counsel in the case, but assisted in effectuating a settlement. At the mediation, which I attended in New York City, the case was settled within the policy limits for $50 million. United States District Judge Mary Lewis awarded fees of 30% of the common fund.

(j) **Cook v. Santee Cooper – Case No. 2017-CP-25-00348**
In the instant case, I served as counsel for defendant Jack Wolfe in his capacity as a former Director of Santee Cooper. My service in this case was limited to review of documents and depositions in preparation for Mr. Wolfe's deposition, as well as attendance at his deposition. After the settlement agreement was executed by the parties, I was asked to serve as an expert in the *Cook* case and my involvement did not commence until after I had obtained the consent of Mr. Wolfe

5. I estimate that I have spent more than 6,000 hours as an attorney in class action matters.

6. I have previously been qualified as an expert, and testified on the issue of adequacy of class counsel in Anderson County Hospital v. W. R. Grace, Case No. 92-CP-25-279 (Hampton County Common Pleas), May 2001. After my testimony, the Court granted the motion to certify the case as a class action.

7. I also provided expert opinions via affidavit in Lightsey v. SCE&G (Case No. 2017-CP-25-0335) on the subject of class counsel fees. My opinions were accepted by Judge John C. Hayes, III, and he awarded approximately $50M in fees per his Order Approving Fees and Expenses dated June 11, 2019.

8. I have tried many non-class action cases in numerous South Carolina counties and in federal courts in Greenville, Columbia, Aiken and Rock Hill. In 1996, I became a Fellow in the American College of Trial Lawyers, and I served as chair of the South Carolina chapter of the American College from 2015 until 2017. I was admitted to the American Board of Trial Advocates in or around 1998, and I served as President of the South Carolina Chapter of the American Board of Trial Advocates for calendar year 2005. A copy of my resume is attached as **Exhibit 1**.

9. I believe that my experience litigating class action cases has given me good insight into the substantial difficulties encountered by class counsel in this case. The issues faced by class counsel ran the gamut from proving legal theories, engaging expert witnesses, developing facts through discovery, asserting and prevailing on motions to compel (which are always important if counsel is to prove their case), refuting defenses, and developing a sound trial strategy. Underlying all this, counsel engaged in extensive motions practice, which required thorough, well-researched briefing on a myriad of issues throughout the litigation. In each of these areas, class counsel was faced with experienced, tenacious, and highly regarded defense counsel, but met the defense challenges superbly. The beneficial results achieved for the class by counsel were stupendous, as explained herein.

10. The Class Notice discloses that the parties agree that the fee sought by class counsel will be up to 15% of the common fund benefit. To my knowledge, as of the date of this affidavit, no class member has objected to a 15% fee as excessive. As discussed below, I believe that the fee requested is both reasonable and meritorious in light of the appropriate factors. I recommend that the Court approve the fee application.

II. MY ASSIGNMENT AND MATERIALS REVIEWED

11. I was asked by class counsel in this matter to review relevant information and to opine on whether the fees and costs of class counsel, for which they seek reimbursement, are reasonable given the facts and circumstances of this case. I have conferred with counsel concerning their application and have conducted independent research. In addition, I have familiarized myself with class counsels' physical file in this matter. My review includes the following:

a. Pleadings in the case;

b. Application for attorneys' fees and reimbursement of costs filed by class counsel (with attached affidavits);

c. Discovery requests and responses to same;

d. Motions filed and memoranda in support and in opposition to same;

e. Telephone conferences with several members of class counsel team;

f. Order Granting Temporary Approval of Class Action Settlement filed March 17, 2020, with attached Settlement Agreement and other exhibits;

g. Critical documents produced by SCE&G and Santee Cooper, including KPMG Report (2009); PWC Report (2011); Bechtel Report (2016); and internal emails;

h. Depositions of Steve Byrne, Carlette Walker, Kevin Marsh, Mike Couick, and Mike Crosby;

i. Summaries of opinions of plaintiffs' experts: John O'Brien, PhD; Ellison Thomas, C.P.A.; Philip Moor, P.E.; John Heneage, P.E.; and, Trey Daniels, P.E.

j. Hearing Transcript of March 17, 2020;

k. Affidavit of John R. Alphin dated May 13, 2020;

l. Affidavit of Greg Galvin dated April 21, 2020;

m. Affidavit of Jessica Fickling dated April 29, 2020;

n. Affidavit of John B. Brantley dated May 12, 2020; and,

o. Affidavit of Jerry Hudson Evans dated May 11, 2020.

12. Based on the foregoing and a careful review of the relevant documents in this extensive matter, along with my independent research, I am of the opinion to a reasonable degree of professional certainty that the fees and costs sought by class counsel are reasonable and clearly within the range of fees and costs awarded in similar cases. The specific bases of my opinion are set forth hereinbelow.

III. CASE TIMELINE AND SUMMARY OF RELEVANT FACTS

13. The Fee Application of Class Counsel contains a thorough review of the development of the case from its inception following the joint abandonment by SCE&G and by Santee Cooper on July 31, 2017 of the project to construct two (2) nuclear reactors in Jenkinsville, South Carolina ("the Project"), until the mediation and settlement agreement in February 2020.

14. Less than a month after the Project abandonment, Cook v. South Carolina Public Service Authority, Case. No. 2019-CP-23-06675, was filed on August 22, 2017, on behalf of a class of Santee Cooper indirect customers (the members of 20 South Carolina electric cooperatives) who purchase, via Central Electric Power Cooperative, Inc., 70% of Santee Cooper's power output. This action was filed by Speights & Solomons, LLC, one of the foremost class action firms in South Carolina.

15. The next day, August 23, 2017, Kolbe v. South Carolina Public Service Authority, Case No. 2017-CP-08-2009, was filed on behalf of the direct customers of Santee Cooper – individuals and businesses mostly in Berkeley County who bought electric service directly from Santee Cooper. These direct customers purchased 30% of Santee Cooper's power output. Class counsel in that case, Jay Ward of McGowan, Hood & Felder, and Clay McCullough of McCullough Khan, L.L.C., are also highly regarded in class action matters.

16. In early 2018, Cook and Kolbe were consolidated under the Cook caption. These firms would later bring together other experienced class counsel forming a structure with the capabilities to meet the formidable tasks associated with prosecuting the matter.[1] In late March, Plaintiffs filed a Fourth Amended Complaint alleging eleven (11) causes of action against Santee Cooper, its directors, Central, Palmetto Electric Cooperative, Inc., SCE&G, and SCANA. This consolidated Complaint sought relief for all customers of Santee Cooper against both Santee Cooper and its partner on the nuclear project, SEC&G.

17. In the Lightsey case, a settlement was reached and approved for the SCE&G customer class when Judge Hayes issued the Final Approval Order on June 11, 2019. Lightsey was a difficult, hard-fought case with novel issues. However, class counsel in Cook were faced with almost insurmountable obstacles in their effort to obtain a monetary recovery from, on the one hand, a state agency that claimed any recovery would have to be paid from the very ratepayers who were the plaintiff class members, and, on the other hand, SCE&G emboldened by strong legal defenses and no contractual privity with members of the class.

18. Beginning at inception of the case, and continuing throughout, Santee Cooper argued that, pursuant to the Santee Cooper Enabling Act, S.C. Code Ann. §58-31-200, it would not be liable, jointly or severally, for the acts, omissions, or obligations of the operator or other owners of the plant at V.C. Summer. Early in the case, Santee Cooper filed a petition in the original jurisdiction of the Supreme Court for declaratory judgment on this point. Due to excellent briefing by class counsel, the South Carolina Supreme Court denied this petition on February 22, 2019.

[1] Richardson, Patrick, Westbrook & Brickman; Strom Law Firm, LLC; Bell Legal Group; and Savage, Royal & Sheheen are all outstanding firms with substantial class action experience. Their excellent work in Cook is referenced herein.

19. Class counsel were also required to demonstrate SCE&G's liability to Santee Cooper customers in the face of no contractual privity between SCE&G and the class members (unlike in Lightsey where SCE&G was in privity with each and every one of its customer class members). Class counsel undertook the herculean task, via discovery, factual investigation, and motions to compel, to establish that high-level SCE&G officials were well aware of the difficulties (cost overruns, schedule deficiencies, and mismanagement, etc.) encountered on the project as far back as 2010, but withheld the information from the public in order to keep the Project – and its profit – alive. In the Lightsey case, liability was based in large part on the findings of mismanagement that became public with a report drafted by third party auditor Bechtel Power Corporation ("Bechtel"). Bechtel was engaged by SCE&G and Santee Cooper in 2015 and, thereafter issued a report, which SCE&G scrubbed and withheld from the public. Following Project abandonment, Governor McMaster ordered Santee Cooper to produce the report in late-2017. Lightsey established that by 2015, or at the latest 2016, SCE&G was on notice per the Bechtel Report of its deficiencies in management, scheduling, design, construction, and oversight.

20. In the instant case, however, through diligent discovery practice and a series of successful motions to compel, class counsel developed information and documents which showed that, long before Bechtel, SCE&G commissioned at least two other "independent" consultants to specifically assess SCE&G's role on the Project. KPMG issued a report in 2009 and Price Waterhouse Coopers issued a series of reports from 2010 through 2011. These reports revealed that all of the deficiencies and gross mismanagement set forth in the 2016 Bechtel Report were well-known to SCE&G as early as 2010. Discovery confirmed that, as was done with the Bechtel report, SCE&G withheld these reports from public view. In particular, these reports, which

focused on project management and governance, were devastatingly critical of SCE&G's ability to successfully manage the Project.

21. Plaintiffs also honed a specific moment in time that they determined was a liability threshold for the remainder of the Project. Prior to the issuance of a license by the Nuclear Regulatory Commission, and for a set period of time thereafter, a provision in the Engineering Procurement and Construction (EPC) contract provided an "exit ramp" called Full Notice to Proceed. By not giving Full Notice to Proceed, both defendants could have walked away from the project without penalty, thus mitigating the damage as of 2012. The depositions taken by class counsel show that exiting the project before the Full Notice to Proceed in April 2012 would have saved many millions of dollars in project financing costs, and billions of dollars of future damages, but neither SCE&G nor Santee Cooper gave serious consideration to early abandonment despite the assessments by KPMG and Price Waterhouse Coopers.

22. Through depositions and copious discovery, Class Counsel demonstrated the owners were aware almost from the very beginning of significant problems with the modular construction concept, a foundational basis for the projected cost of the project. Class Counsel demonstrated that, by 2011, the owners not only knew the modular construction was unconstructable, but also that the project had no "visibility." Effective oversight was illusory due to the absence of a resource loaded schedule, an industry standard on major construction projects. In addition, Class Counsel showed that the Project data available placed the Owners on early notice that incomplete design and poor execution had significantly impacted the Project completion date.

23. With respect to Santee Cooper, Class Counsel also demonstrated that the agency knew by roughly 2009 that any need for the project that may have existed had evaporated. A combination of a recession, increased efficiency, lower cost of alternative fuels, and the removal

by Central Electric of a massive amount of load from the Santee System, all brought into clear view that proceeding with a costly first-of-a-kind nuclear project was not reasonable. Nevertheless, the Santee Cooper Board gave its Notice to Proceed (and to spend an additional $5 billion toward the Project) by telephone.

24. On November 21, 2019, with a trial date looming, executives invoking their 5th Amendment rights during depositions, and following several discovery rulings against them, SCE&G removed the case to federal district court. Class Counsel filed and briefed their motion for remand, which was granted on January 21, 2020, by the District Court, the Honorable Terry Wooten. Seven days later, SCE&G moved for a stay of the remand pending its appeal to the Fourth Circuit Court of Appeals. Its motion, opposed by class counsel, was denied.

25. Following remand, Class Counsel continued depositions of SCE&G and Santee Cooper high-level officers. The deposition of Steve Byrne, the Chief Operating Officer of SCE&G, taken on February 17, 2020, was a culmination of months of effort. Byrne was one of four top level SCE&G executives to invoke his Fifth Amendment privilege during depositions in this case, declining to answer all questions. The other executives included the former CEO and CFO, and Chief Nuclear Officer.

26. The 124-page examination by class counsel, Jessica Fickling, contains numerous SCE&G emails which reflected SCE&G's engagement of both KPMG and Price Waterhouse Coopers as independent Project auditors, and knowledge of the auditors' findings including cost-overruns, mismanagement, inefficiencies, delays in construction, failure to adhere to schedules, and the egregious failure to have a complete design plan for the project. The KPMG Report was dated April 2, 2009, and the Price Waterhouse Coopers Report titled "V.C. Summer – Project Governance Review" was dated July 2011. Both reports were presented to the Board of Directors

of SCE&G and the Santee Cooper Board. Byrne was also presented with the transcript of his sworn testimony at before the South Carolina Public Service Commission (PSC) in 2012 during a request by the Owners to increase the cost of the project by over $250 million (*See* Transcript of Byrne Deposition, Exhibit 8). In that testimony, Byrne made no reference to KPMG's or Price Waterhouse Coopers' assessments, despite being in possession of both, and it is clear that his testimony at the PSC was false. Of note, on page 17, Byrne testified that the costs of the project "reflect a prudent and valuable investment...to protect"...[the] interests...of its customers..."

27. From February 18 through the early morning of February 20, 2020, Justice Toal conducted a two-day marathon mediation, with all parties present. Thanks to the diligent and exhaustive discovery efforts of Class Counsel, they approached the mediation from a position of strength. At 2:00 A.M. on the second day of mediation, after various proposals and counter-proposals, the case was settled. The defendants agreed to pay $520M for a common fund. Of this, SCE&G is to contribute $320M and Santee Cooper will contribute $200M in three payments: $65M in the third quarter of 2020, $65M in the third quarter of 2021, and a final payment of $70M in the third quarter of 2022. The payment plan for Santee Cooper was necessitated by Santee Cooper's cash flow issues and precarious financial situation. Another vital component of the settlement is a four-year moratorium on rate increases to the Santee Cooper class customers. This moratorium is estimated to save Santee Cooper customers approximately $510M (see Affidavits of John R. Alphin and of John B. Brantley attached to the Fee Application).

28. As a final term of the settlement, Santee Cooper and SCE&G agreed the costs of these settlement payments will never be assessed from their customers, and Justice Toal retains jurisdiction to enforce these future benefits to the class if necessary.

29. The total cash settlement of $520M encompasses nearly 100% of the total value of funds paid by the Santee Cooper customer class from project inception until Project abandonment. In total, by electing to give full notice to proceed in April 2012, the defendants caused $540M damages to the class for the period 2012 through December 2019. The $540M figure is, coincidentally, the amount charged whether computed from project inception (2008) to abandonment (2017) or from Full Notice to Proceed (2012) to just before settlement in December 2019.

30. As noted by Justice Toal on page 19 of the Transcript of the Hearing on Plaintiffs' Motion for Preliminary Approval of the Settlement on March 17, 2020, the common benefit fund of $520M represents more than 95% of the $540M that the class paid from April 5 2012 – the date of full notice to proceed - through the end of 2019. This benefit is exclusive of the additional benefit conferred on the class through the four-year moratorium on rate increases through 2024. The Affidavits of John R. Alphin and John B. Brantley establish that this benefit is valued at $510M.

31. Two days after mediation, on February 22, 2020, the Securities & Exchange Commission filed a complaint related to the Project against prominent former SCE&G executives, including Kevin Marsh and Steve Byrne, both of whom asserted their Fifth Amendment privileges and refused to answer questions when deposed in Cook. It is unknown when the Securities & Exchange Commission first became aware of the SCE&G wrongdoing, but undoubtedly class counsel either caused, prompted, or assisted the securities fraud investigation of SCE&G officials.

IV. OPINIONS AND ANALYSIS

A. A Fee of 15% of the Common Fund is Entirely Reasonable and Appropriate

32. As an introductory matter, fee awards based upon a percentage of a common fund benefit in complex cases are widely accepted nationally and in South Carolina. United States District Court Judge Bryan Harwell explained the logic of awarding a common fund percentage fee as follows:

> The percentage-of-the-fund approach rewards counsel for efficiently and effectively bringing a class action case to a resolution, rather than prolonging the case in the hopes of artificially increasing the number of hours worked on the case to inflate the amount of attorney's fees on an hourly basis.
>
> DeWitt v. Darlington Co., 20136408371, at * 6 (D.SC., Dec. 6, 2013).

33. The percentage-of-the-fund method enhances efficiency, while a focus on hours spent does not; it encourages inefficiency. Some courts do look at the hours expended, the so-called "lodestar" method. However, I am of the opinion that this method is not the most appropriate means to analyze fees in extremely difficult, high-profile cases that require creativity and savvy and where class counsel are experienced, organized, and focused as is the case here.

34. For example, the six "senior most" members of the Cook Class Counsel team, Dan Speights, Ed Westbrook, Terry Richardson, Ed Bell, Jay Ward, and Pete Strom, have a combined 200+ years of class action experience. Further, because of their experience, they have wisely hired, trained, and worked with extremely polished, smart, younger lawyers who did much of the heavy lifting in Cook, including Gibson Solomons, Jessica Fickling, John Alphin, Amy Wilbanks, Ranee Saunders, Whitney Harrison, and Jerry Evans. Finally, underlying this entire case was the continued existence of an agency with a legacy dating back over 80 years. As such, the experience and background of voices including Vincent Sheheen and Bakari Sellers were pivotal in bringing this case to its conclusion.

B. South Carolina State and Federal Class Actions in Recent Years Have Readily Approved Fees in the Range of 25% or More

35. The Fee Application of class counsel cites numerous common fund cases awarding fees of 25% or more. *See* Condon v. State, 354 S.C. 634, 583 S.E.2d 430, 435, FN8 (2003) (28% fee awarded); Anderson Memorial Hospital v. W.R. Grace, Case No. 92-CP-25-279 (Hampton County Common Pleas Court, December 10, 2008) (Judge John Hayes awarded one-third of the common fund as fees); Fairey v. Exxon Corporation, Case No. 94-CP-38-118 (40% of the common fund was awarded on a $30M recovery); Lackey v. Green Tree Financial Corp., Case No. 96-CP-06-073 (Court of Common Pleas, July 24, 2000)(awarding a one-third fee); Ward v. Dixie National Life Insurance, Case No. 3:03-cv-03239-JFA, (slip opinion), (D.S.C. Dec. 15, 2008) (the Honorable Joseph F. Anderson awarded a one-third fee); Spartanburg Regional Health Services District, Inc. v. Hillenbrand Industry, Inc., 2006 WL 84464646 (D.S.C., August 15, 2006) (Judge Floyd awarded a 25% class action fee on a settlement of $470M); Montague v. Dixie National Life Insurance Co., 2011 WL 3626541 (D.S.C., August 17, 2011) (Judge Anderson awarded a one-third fee).

36. Class Counsel's Fee Application in Cook also looked to numerous non-South Carolina "mega-cases" for guidance, where fees in excess of 15% were ultimately awarded. These mega-cases involved common fund settlements ranging from $410M to over $1B (*see* Class Counsel's Fee Application, page 27) and the percentage fees awarded ranged between 16% and 33 1/3%.

C. Analysis: Factors Under *Jackson V. Speed*

1. Nature, Extent, and Difficulty of the Case

37. This case was without precedent. It was based on novel theories and opposed by tenacious, experienced, and highly respected defense lawyers. To call the case difficult would be an understatement.

38. Per the Fee Application on page 29, this case was a cutting-edge effort to address a novel injury using a creative legal theory. In fact, other challenges to nuclear project abandonment costs had already failed. See Newton v. Duke Energy Florida, L.L.C., Case No. 16-cv-60341-WPD (S.D. Fla. 2016) (the court dismissed the claims of Florida customers who had advanced $2B to fund a failed nuclear project), aff'd., 895 F. 3d 1270 (11th Cir. 2018); Biloxi Freezing & Processing, Inc., et. al. v. Mississippi Power Co., et. al, Case No. A249100077 (Miss. Cir. June 23, 2017) (customer claims challenging the spending on power plant project).

39. The Complaint asserted 14 causes of action. In addition to its claim for declaratory judgment, the Complaint sought damages based on a wide array of violations including breach of statutory duty, breach of fiduciary duty, breach of contract/implied contract, unconstitutional taking, and constructive trust.

40. In its Answer, Santee Cooper asserted 45 defenses (plus counterclaims, cross claims, and Third Party Complaint). SCE&G asserted nine defenses. Together, they pled the following: lack of standing, laches, waiver, estoppel, superceding acts of third parties, lack of foreseeability, binding mandatory arbitration, failure to state facts sufficient to constitute a cause of action, sovereign immunity as a bar, statutory bars/exemptions per South Carolina Code, the business judgment rule, statute of limitations, filed rate doctrine, service tariff as a bar, barred by Coordination Agreement, no fiduciary duty owed, failure to adhere to administrative remedies, voluntary payment doctrine, unmistakability doctrine, sovereign acts doctrine, the doctrine of ratification, unforeseen events, and the reserved powers doctrine.

41. Defense counsel pursued all defenses thoroughly and aggressively. Discovery production required herculean efforts and class counsel was successful in pushing for critical documents showing the scale of the debacle at V.C. Summer, knowledge of mismanagement by

the highest corporate officers, and their cover-up, thanks to pursuing eight motions to compel successfully.

42. I am aware that the docket sheets in this case show hundreds of entries, consisting of pleadings, discovery requests and responses, motions, and orders. These reflect not only numerous motions filed by SCANA and SCE&G in this case, but the parties' filings in the Supreme Court and in Federal Court following SCE&G's removal, and Class Counsel's aggressive fight to remand.

43. A virtual mountain of documents was provided by the two lead defendants, Santee Cooper and SCE&G: in total SCE&G produced roughly 2 million pages of documents, and Santee Cooper produced over 500,000 pages. Led by the technical savvy of Greg Galvin, Class Counsel deployed software to enable them to search for critical documents what would establish the culpability , knowledge and participation in the inefficiencies and mismanagement by the corporate entities and their officers.

44. Class counsel's out of pocket costs were $1,541,595.84, which included costs associated with court reporters and transcripts for dozens of depositions, retention of numerous experts who were required to review significant volumes of documents, and significant costs associated with processing the document production (Affidavit of Jerry Evans).

45. Class counsel engaged eight experts in support of their claims. SCE&G and Santee Cooper employed a total of 12 expert witnesses, and other defendants named an additional 10 experts. At the point in time the case resolved, the parties were scheduled to undertake these expert depositions at various locales up and down the east coast, including Atlanta, New York, and Washington D.C.

46. The case was monumental in its significance to hundreds of thousands of class members. It consumed two and a half years of fierce and protracted litigation.

47. As United States District Court Judge Joe Anderson noted in Montague v. Dixie National Life Insurance, 2011 WL3626541 (D.S.C. 2011), "...the riskier the case, the greater the justification for a substantial fee award."

2. Beneficial Results Obtained

48. The best case for damages ("full recovery") was approximately $541,000,000, as it represented the amount of a realistically achievable damage award at trial. This represents the financing costs paid by the class from April 5, 2012, (the date of Full Notice to Proceed) until December 31, 2019. The agreed settlement of $520M represents 96.2% of this full recovery.

49. However, class counsel also negotiated a benefit to the class of $510M which is the value of the four-year rate freeze/moratorium from 2020 through 2024 (*See* Affidavit of John Alphin, Paragraph 7; and Affidavit of John B. Brantley, Paragraph 5). No fee is sought for this important additional benefit. However, this benefit is real and, when added to the cash settlement of $520M, the total recovery is $1,030,000,000, which is almost double the amount of the realistic loss to the class ("full recovery"). A 15% attorney's fee of the total benefit (including the value of the rate freeze), which is not requested in the Fee Application, would be approximately $154,500,000. The fee requested, of 15% of the cash recovery ($78M), is computed to be approximately 7.5% of the total benefit, including the value of the rate freeze. The net benefit to the class, after deduction of a 15% attorney's fee and $1.5M in costs advanced, is $950M.

50. This return to the class members, one of the highest common fund recoveries in our state's history, is unparalleled in South Carolina class action practice. I am aware of no South Carolina class action, state or federal, where the class has achieved such a stupendous outcome.

The beneficial result was made possible because of the focused, full court press applied by the diligent hard work of experienced class counsel, which positioned the case into a posture for success.

51. The victory must be attributed to the creative, persistent, and non-stop efforts of the class counsel team. Their organization of the team into groups and sub-groups resulted in a discovery plan that yielded critical documents and witnesses for trial, and their brief writing, which was both thorough and scholarly, led to consistent favorable rulings. Most importantly, the team was guided by adept lawyers, seasoned by many years of complex trial experience who developed the evidence into a cogent, cohesive trial plan. I regard the beneficial results achieved by class counsel as the most significant factor justifying full approval of the Fee Application.

3. Time Necessarily Devoted to the Case

52. Class counsel undertook this risky case on a contingency basis. Had they not prevailed, they would have expended over $1,540,000M of out-of-pocket expenses and been paid nothing. Additionally, due to the demands of the litigation, class counsel turned down other cases and devoted their practice nearly exclusively to this matter. The defendants do not oppose their fee request not to exceed 15% of the common fund. As of the time of this affidavit, no objections to the fee application have been filed.

53. The efforts of class counsel here have not only yielded an exceptional recovery for the class, but their efforts were intense, persistent, and well-organized. Their work consumed long hours and weekends, but, given the demands of the case, was efficient, coordinated, and focused. While the case consumed two and a half years, hypothetically, had the case been settled on the same terms a year earlier with the same common fund (and fewer "attorney hours"), it would still be my opinion that a 15% fee of the common fund would be appropriate and reasonable.

54. As this Court stated at the hearing on motion for temporary approval: "I don't know of any lawyer on any side of this matter who've worked any harder in the many years I've been a judge than the lawyers who appear in this case." (March 17, 2020, Hearing Transcript, p. 42).

55. The work here of class counsel was not aided by any collateral governmental investigation. In fact, the Securities & Exchange Commission filed its complaint alleging securities fraud against officers of SCE&G only *after* the mediation ended. Arguably this case aided the Securities & Exchange Commission's work.

56. It is my opinion that the time class counsel devoted to this case was precisely the amount of time required for distinguished class counsel to achieve the exceptional result here.

4. Professional Standing of Counsel

57. The magnitude and difficulties of this case required the "best of the best" counsel to prosecute novel and tough issues against esteemed and excellent defense counsel. As set forth below, class counsel are exceptionally talented, aggressive, and experienced in class action litigation.

a. Speights and Solomons

58. Dan Speights, admitted to the Bar in 1973, has spent his entire legal career handling and trying complex cases. He is highly regarded nationally for his work as lead counsel in complex class actions and mass tort litigation. He has achieved verdicts and settlements in many multi-million dollar recoveries. I practiced with Dan at Glenn, Porter & Sullivan in Columbia during the mid-1970s and have personal knowledge of his excellent skills as a trial lawyer. I am also aware and can attest to his excellence as a strategic planner in complicated cases and to his qualities for developing and executing discovery and trial plans that are streamlined and successful.

59. Dan's partner, Gibson Solomons, is also very gifted and experienced in complex class action cases. He and I served as co-lead counsel in Thompson v. GAF (Case No. 8:11-cv-983-JMC; Case No. 8:11-mn-02000-JMC), which, after almost 10 years of litigation, was settled, and I attest to his excellent and thorough work on that case. Gibson has a great analytical mind. His skills were of critical help in the Cook case.

60. Speights & Solomons was the first firm to file a class action in Cook on behalf of the indirect customers of Santee Cooper. They served as lead counsel for the litigation and lead trial counsel. They developed the theories in the case and played a key role in developing the legal basis for the claims. They did an exemplary job of successfully arguing in opposition to various motions on multiple novel issues of law. They were successful in arguing for class certification, which was vigorously contested by the defendants. They also served as coordinating counsel for trial and played an important role in planning, discovery, and in taking numerous depositions. At mediation, Speights & Solomons was an important factor in settlement negotiations. There is no law firm in South Carolina that enjoys any higher professional reputation for excellence in high-stakes class action litigation than Speights & Solomons.

b. McGowan, Hood & Felder, LLC

61. McGowan, Hood & Felder, LLC ("MHF") is an outstanding firm and well experienced in class action litigation. Jay Ward has extensive experience handling complex cases and was recognized in Best Lawyers in America (25th Ed. 2019) for plaintiff mass tort litigation/class actions. He enjoys an excellent reputation in class action practice. He is the recipient of the Silver Compleat Lawyer Award from the South Carolina School of Law and he has an AV Peer Review Rating by Martindale-Hubbell.

62. MHF filed the first case (Kolbe) on behalf of direct customers, which was later consolidated into the Cook case.

63. MHF served as Chair of the "Law Committee" for the class counsel team. They played a lead role in opposing Santee Cooper and SCANA's motions to dismiss, Santee Cooper's motion to compel arbitration, Santee Cooper's petition for original jurisdiction, the Santee Cooper's motion to stay, SCE&G's removal and the subsequent appeal from the District Court's Order on remand, and various other motions. Jay Ward, Whitney Harrison, and Ranee Saunders wrote numerous memoranda that were of great importance in the case and yielded great results for the class. MHF was also heavily involved in fact and expert discovery, as well as at mediation.

c. Richardson, Patrick, Westbrook & Brickman, LLC

64. Richardson, Patrick, Westbrook & Brickman ("RPWB") attorney Terry Richardson has been practicing law for 45 years and has achieved numerous multi-million dollar verdicts and settlements. I have known Terry for over 45 years and I can attest to the fact that his standing in complex litigation is exemplary.

65. Ed Westbrook, likewise, has extensive experience in class action litigation and was named a 2019 Lawyer of the Year in Mass Tort Litigation and Class Actions. He was very involved in the nationwide tobacco litigation resulting in a $250 Billion settlement. As part of the class counsel team, Ed served on the "Law Committee" and participated in responding to defense motions and settlement pleadings. Other members of the RPWB firm, such as Dan Haltiwanger and Jerry Evans, were also deeply involved in developing expert testimony, strategic case management, and participating in depositions of numerous witnesses.

66. RPWB has a well-deserved reputation as a "go to" firm for complex, high-stakes class action litigation.

d. Strom Law Firm, LLC

67. Lead partner Pete Strom, is a former United States Attorney for the District of South Carolina and a lawyer with a well-regarded reputation for excellence in class action matters. Pete has participated in the resolution of numerous class action cases on a successful basis. The Strom Law Firm enjoys a longstanding reputation for achieving great results in complex cases.

68. Two of Pete's law firm members, Jessica Fickling and John Alphin, were actively engaged in the Cook case on a daily basis. Jessica was a principal lawyer for the team who communicated with defense counsel on a near-constant basis and made all class counsel committee members aware of issues that needed attention. This kept the case moving at a brisk pace. She and John Alphin also prepared important pleadings, pursued discovery, coordinated efforts to challenge defendants' privilege logs (which turned out to be an extremely important endeavor). Jessica and John were most helpful and valuable in developing themes for the case based on their working knowledge of the timeline of the Project and in delving into the financial and regulatory nuances of the project that proved critical to understand the efficiencies and mismanagement as well as the concealment by the defendants.

e. Bell Legal Group, LLC

69. Ed Bell and his firm were important to the discovery process as well as trial preparation. Ed Bell has achieved many multi-million dollar verdicts and settlements and is highly regarded for his excellence as a successful trial lawyer. The Bell Group participated in discovery, mediation, and in developing trial strategy.

70. Bell Legal Group was also lead counsel in an ancillary matter, Luquire, et. al. v. Marsh, et. al., and they did significant research on the liability of officers and directors.

f. Savage, Royall & Sheheen

71. Vincent Sheheen is an outstanding lawyer and has an excellent record of success for his clients in complex matters. Vincent was very involved in developing a settlement strategy and negotiating with the defendants. He was also a major part of mediation efforts and in interacting with the Court.

g. Galvin Law Group, LLC

72. Greg Galvin is an experienced litigator with expertise in technological litigation tools. His expertise has been acknowledged in that he received an award from the South Carolina District Court for assisting the Court with technology issues. In Cook, he focused his efforts in utilizing his computer platform with Nemo software. This allowed the class counsel team to search over a million pages of documents produced to find the "hot documents" and to get those documents to lawyers in preparation for depositions and motion hearings.

h. McCullough Kahn, LLC

73. McCullough Kahn served as co-counsel with McGowan, Hood & Felder in bringing the Kolbe case on behalf of Santee Cooper direct customers. This firm brought its knowledge and experience in complex litigation to bear in this case, participated in numerous depositions, and assisted in the preparation of various motions of importance.

i. Defense Counsel

74. One of the most difficult aspects of this case was facing defense firms who were highly adept, skillful, and accomplished in their own right. I will not comment on the lawyers on the defense team individually except to say Nelson Mullins is likely the premier defense firm in South Carolina. They represented Santee Cooper well. I have many friends at Nelson Mullins, including William Hubbard and Rush Smith, who were lead counsel here. Both William and Rush are top

quality complex case trial lawyers and were very formidable opponents in Cook. Counsel at King & Spalding are likewise excellent and consummate trial lawyers on both the regional and national stage. They advanced the defense of SCE&G with zeal and experience, and this made class counsel work all the harder. The fact that defense counsel were exceptionally skillful and diligent is a significant factor in assessing the fee request of class counsel, their opponents.

5. Contingency of Compensation

75. Plaintiffs' counsel agreed to undertake this case on a contingency basis, knowing that the case was fraught with substantial risks that they would not be paid at all. If our court had concurred with the analysis of the U.S. District Court in the Newton case in Florida, this case would have been dismissed, the class would have recovered nothing, and the lawyers would not have been paid.

76. This is a perfect case for a contingency fee because the claims of the 2.2 million class members would have each been relatively small individually, and it is highly unlikely that a lawyer would have taken the case on an hourly basis because the client could not have afforded it.

77. The Settlement Agreement provides, and the parties all agreed, that class counsel will request an amount "not in excess of 15%" of the Common Benefit Fund, and it seems to be settled that the percentage of the common fund is the appropriate method of determining fees in this case.

78. Case law in South Carolina and in the federal courts make it clear that the percentage of the fund method is appropriate here. In Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003), the Supreme Court upheld a percentage fee of 28% assessed against the common fund. *See also*, Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) (the court noted that when a common fund has been created, the fund pays the plaintiffs' attorneys who created it, using a percentage method).

79. In Global Protection Corp. v. Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (1998), the Court of Appeals affirmed the attorney's fee award of one-third of the damages of $935,457, noting that a contingency fee arrangement is common in complex cases and that such contingency fees range from one-third to one-half of the recovery. Id. 332 S.C. at 161, 503 S.E.2d at 489.

80. In Anderson Hospital v. W. R. Grace, Inc., Case No. 92-CP-25-279 (Hampton County Court of Common Pleas), this court approved a one-third contingent fee from a class action fund of $57 million. See also, Colleton Prep. Academy, Inc. v. Hoover Universal, Inc., Case No. 2:04-cv-00531 DCN (2009) where U.S. District Court Judge Norton awarded fees of one-third ($290,000) of the damage award of $871,000.

81. Important to this inquiry is the risk assumed by class counsel that they would recover nothing. Our Supreme Court in Condon affirmed a fee of 28% of the common fund, noting:

> "Although Respondents were awarded a very substantial sum ($2.1 million) for their work, Respondents achieved a good result for the class, including securing the prospective enforcement of the tax exemption, and took the risk of not earning any fee at all." (emphasis added.)
>
> Id. at 643.

82. Senior U.S. District Court Judge Joe Anderson also pointed out that risk is a significant factor in justifying a percentage of the fund method for setting fees. In Montague v. Dixie National Life Insurance, 2011 WL3626541 (2011), after granting summary judgment in favor of the class, he awarded fees of one-third of the fund. He wrote:

> Courts recognize that the risk that there is no recovery is a major factor in awarding attorneys' fees and it is the primary aspect of a contingency fee case that supports a percentage fee recovery. "Courts note that the riskier the case, the greater the justification for a substantial fee award."
>
> Id. (Emphasis added).

83. Judge Anderson's order in Montague recognized compelling authorities beyond South Carolina, including the United States Supreme Court. *See* Boeing v. Van Gemert, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980) ("a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney's fees from the fund as a whole"); Manual for Complex Litigation (4th) Section 14.21 at 187 (recognizing that federal courts of appeal now permit or direct district courts to use the percentage-fee method in common fund cases).

84. This case was not based on settled law. It was risky at inception and from the beginning the potential of prevailing was uncertain. Of the nine class action cases in which I have served as counsel (*see* ¶. 4 *supra.*), three were unsuccessful for the plaintiff: two were not certified; and, one was dismissed on summary judgment for the defendant. Class counsel here put over $1.5M of advanced costs at risk in this case, and their ability to do so militates in favor of a full award of fees.

6. The Customary Fee for Similar Services

85. It is my opinion that the 15% fee requested in this case is reasonable, fair, and appropriate, and should be considered at the low end of the range of acceptable fees.

86. In traditional class action cases, courts have routinely approved contingency fees of one-third or more of the recovery. I am personally familiar with two cases where courts approved fees of one-third and 40%. In Anderson Memorial Hospital, supra., where I testified as an expert, the court approved a fee of one-third where the common fund settlement was $57M. In Fairey v. Exxon Corp., Case No. 94-CP-38-118 (Orangeburg Common Pleas Court), Judge Goodstein awarded a fee of 40% over a $30M common fund settlement. My involvement in that case was as guardian ad litem for certain adjacent property owners, and I am familiar with the facts of that

case, along with the work and the efforts of lead counsel, Dan Speights. Class counsel's work in that case was exemplary as it is here in Cook.

87. Judge Anderson noted in Montague that fee awards of one-third of the common fund are consistent with what is customary for common fund cases.

88. The cases cited in class counsel's application are adopted herein by reference, and are further indicative of the customary fees for similar cases.

89. I am not aware of any common fund case in South Carolina where a class has achieved a net recovery of more than 100% of the realistic damage award, after fees and costs. Accordingly, this result is unprecedented. Hypothetically, if class counsel were awarded a 25% fee of the common fund recovery in this case ($130M), the class would still net $390M, or 75%, of the realistic damages had the case been tried.[2] In any event, the fees sought by class counsel are well within the range of customary fees approved in similar cases.

V. CLASS COUNSEL ARE ENTITLED TO RECOVER COSTS

90. Class counsel incurred $1,541,595.84 in costs for this litigation (Affidavit of Jerry Evans). I have reviewed these expenditures and they were necessary and reasonable in presenting this litigation.

91. It is my opinion that these out-of-pocket expenses were reasonably incurred and should be awarded out of the common fund.

VI. SUMMARY

92. In this case, class counsel was faced with complicated and arcane facts relating to a very complex nuclear project and its demise. The issues ranged in subject matter, but included financial analysis, design and engineering issues, construction planning, and corporate

[2] It is my opinion that a 15% fee here is at the low end of the range for a reasonable fee. Even though not requested by class counsel, a 25% fee would be fully justified and supported under the facts set forth herein.

mismanagement. Counsel had to analyze over 2M pages of documents to narrow down a list to be used at the trial of this case. The result achieved is remarkable and for their services they should be fully and reasonably compensated. A 15% fee of the common fund ($78M) is reasonable.

93. Because the case has been difficult and unusual, and because class counsel was faced with excellent, highly competent, and formidable adversaries, class counsel undertook what many thought was a virtually impossible task and they did the job extremely well. Based on the Jackson v. Speed fee factors, the fee requested by class counsel of 15% of the total common fund benefit is reasonable and entirely appropriate. Class counsel incurred out of pocket expenses of $1,541,595.84 in costs during the course of handling this complicated case and it is my opinion that these costs advanced by counsel were reasonably incurred, fair, and deserving of court approval.

94. It is noted that class counsel will incur additional time for which they will not be paid in seeing that the settlement is consummated to the full benefit of the class.

95. All of the opinions that I have expressed herein are to a reasonable degree of certainty in the field of attorney's fees in complex class actions.

SWORN to before me this 19th day)
of May 2020)
)
)
Nina Elizabeth Brooks Alexander (L.S.)
Notary Public for South Carolina
My commission expires: 1/29/2025

Thomas H. Pope III

Thomas H. Pope III

Member

Pope Parker Jenkins, P.A.
1508 College Street – P.O. Box 190
Newberry, South Carolina 29108
Telephone: (803) 276-2532
Fax: (803) 276-8684
tom@ppjlaw.com
www.ppjlaw.com

Practice Areas

Trials in all federal and state courts; Personal Injury; Wrongful Death; Products Liability; Business Litigation; Professional Negligence; Condemnation; Attorney Disciplinary Matters; Class Actions.

Peer Review

AV Preeminent Rating by Martindale Hubbell.

Education

University of South Carolina, J.D., 1974, University of the South, B.A., 1968; Admitted to Practice, South Carolina, 1974

Memberships

- Fellow, American College of Trial Lawyers (1995-Present; Chair, South Carolina Chapter 2015-17)
- American Board of Trial Advocates (Advocate; President, South Carolina Chapter, 2005)
- Listed in South Carolina Super Lawyers (2008-Present)
- Newberry County Bar (President, 1984)
- American Bar Association (Member, Litigation Section)
- South Carolina Bar; South Carolina Trial Lawyers Association
- The Association of Trial Lawyers of America
- Fourth Circuit Judicial Conference (Permanent Member)

Military

Lt. j.g., USNR, 1968-1971; Officer in Charge, Swift Boat (PCF 102) Mekong Delta, VietNam (1969-1970)

Other

South Carolina Board of Bar Examiners, 2006-2014; South Carolina Senate, Member, 1984-1992; Joint Judicial Screening Committee, Chairman, 1991-1992; South Carolina Bar Judicial Qualifications Committee, Chair 1992-1993; University of the South, Member, Board of Trustees, 1999-2002; Certified Mediator and Arbitrator.

Litigation Experience

products liability; breach of fiduciary duty; class actions; auto and truck collisions; professional negligence; business torts; eminent domain; wrongful death; defamation; environmental; employment; and general litigation.

Awarded The Jeter E. Rhodes, Jr. Trial Lawyer of the Year in February 2018 by the South Carolina Chapter of America Board of Trial Advocates.

Exhibit 1

Exh. 18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A NO. 2019-CP-23-06675
JESSICA COOK, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
SOUTH CAROLINA PUBLIC SERVICE AUTHORITY, et al,	)	
	)	
Defendants.	)	
	)	

AFFIDAVIT OF JERRY HUDSON EVANS

I, Jerry Hudson Evans, after being duly sworn, aver as follows:

1. I am an attorney at Richardson Patrick Westbrook & Brickman, LLC, where I have practiced since 2002, and have been a member of the South Carolina Bar since 1996. I am also admitted to practice in the District Court for the District of South Carolina, Superior Court of the U. S Virgin Islands, District Court for the District of the Virgin Islands, and the Fourth Circuit Court of Appeals. My practice focuses primarily on complex litigation, class actions, mass torts, and personal injury. I make this affidavit based on my own personal observation and knowledge.

2. In addition to practicing law with Richardson Patrick Westbrook & Brickman, LLC, I serve as its Managing Member on matters of accounting, staffing, and other business-related concerns of the firm.

3. I was assigned by lead counsel to oversee Class Counsel's expenses. Accordingly, Members of Class Counsel were directed to submit detailed expense records and reports to me for review and confirmation.

4. Based on the detailed expense records provided to me, Cook Class Counsel spent or incurred $1,541,595.84 in pursuit of this litigation and companion litigation.[1]

5. The amount expended by each firm is broken down as follows:

a. $107,086.01 - J. Edward Bell, III, LLC;

b. $118,909.89 – McGowan Hood & Felder, LLC;

c. $ 95,373.33 – McCullough Khan, LLC;

d. $562,118.47 – Richardson Patrick Westbrook & Brickman, LLC;

e. $116,417.57 – Speights & Solomons, LLC;

f. $258,334.42 – Strom Law Firm, LLC;

g. $ 768.15 – Savage, Royall & Sheheen, LLP;

6. Cook Class Counsel also incurred a collective charge of $282,588.00 for e-discovery document management and storage.

7. In addition, co-counsel in the companion litigation *Glibowski v. SCANA Corp., et al.*, submitted records showing $2,297.24 in costs. When added to the Cook Class Counsel total of $1,541,595.84, the grand total of expenses sought to be recovered is $1,543,893.08.

Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true, accurate, and complete to the best of my knowledge.

Jerry Hudson Evans

Subscribed and sworn to before me
this 29th day of May, 2020

Notary Public for South Carolina
My Commission Expires: 4-20-2030

[1] Companion litigation includes *Glibowski v. SCANA Corp., et al.,* 18-CV-00273-TLW and *Luquire, et al. v. Marsh, et al.*, 19:CV-2516-TLW.

Exh. 19

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Case No. 2017-CP-25-00348
Jessica S. Cook, et al., Plaintiffs, v. South Carolina Public Service Authority, a/k/a Santee Coope, et al., Defendants.	CLASS REPRESENTATIVE AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, the undersigned, who, upon being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and competent to make this Affidavit.

2. I am a Palmetto Electric Cooperative customer and a class representative.

3. I filed this action to try and protect the rights of all customers who had become involuntary financiers of the abandoned project.

3. I am aware that the parties negotiated and agreed upon settlement terms. My attorney has reviewed the terms with me. I approve the settlement and feel like it promotes the best interests of the group I filed this action on behalf of, the customers.

4. The settlement establishes a common fund of $520 million plus a rate freeze through the end of 2024. This is a fantastic result for the class, especially considering the extreme legal complexity of this case.

5. My engagement agreement with Speights & Solomons, LLC provides for a one-third (33.333%) contingency fee. This percentage was appropriate at the time due to the

profound difficulty of this case and the highly remote prospect of recovery. Many believed it would be impossible to recover from a state agency like Santee Cooper.

6. I understand my attorneys intend to file a motion requesting a fifteen (15%) percent fee. This reduced percentage is extremely reasonable, considering the excellent result for the class and the substantial effort and risk undertaken for nearly three (3) years.

7. I have been more than satisfied by the representation and results in this case, and I fully support my attorneys' request for fifteen (15%) percent fee.

Jessica S. Cook

Jessica S. Cook

Sworn to before me
this 6th day of May, 2020

Rhonda L. Bowers

Notary for the State of South Carolina
My Commission Expires: 3/7/2029

Exh. 20

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOR THE 13th JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	
	CASE NO.: 2019-CP-23-06675
Jessica S. Cook, et. al.,	
Plaintiffs,	**CLASS REPRESENTATIVE AFFIDAVIT**
v.	
South Carolina Public Service Authority, a/k/a Santee Cooper, et. al.,	
Defendants.	

PERSONALLY APPEARED BEFORE ME, the undersigned, who, upon being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and competent to make this Affidavit.

2. I am a direct Santee Cooper ratepayer and a class representative.

3. I am aware the parties have reached a settlement, I reviewed the settlement's terms with my attorneys, and I approve the settlement.

4. The settlement establishes a common fund of $520 million plus a rate freeze through the end of 2024. This is a fantastic result for the class, especially considering the extreme legal complexity of this case.

5. My engagement agreement with McCullough Khan, LLC dated August 21, 2017 provides for a forty (40%) percent contingency fee. This percentage was appropriate at the time due to the profound difficulty of this case and the highly remote prospect of recovery. Many believed it would be impossible to recover from a state agency like Santee Cooper.

6. I understand my attorneys intend to file a motion requesting a fifteen (15%) percent fee. This reduced percentage is extremely reasonable, considering the excellent result for the class and the substantial effort and risk undertaken for nearly three (3) years.

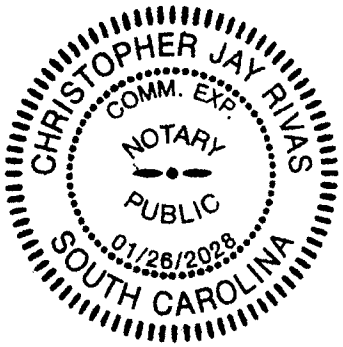
7. I have been more than satisfied by the representation and results in this case, and I wholeheartedly approve of my attorneys' request for a fifteen (15%) percent fee.

Chris A. Kolbe

Chris Kolbe

Sworn to before me
this 23 day of April, 2020

Notary Public for South Carolina
My Commission Expires: 01/26/2028



Exh. 21

Wiles, Margie

From: CHERRY, WILLIAM [WILLIAM.CHERRY@scana.com]
Sent: Friday, April 30, 2010 10:39 AM
To: McCall, Bill
Subject: FW: Privileged & Confidential

Attachments: SCE&G Summary Observations 4-28.docx

SCE&G Summary Observations 4-2...

FYI - Draft Executive Summary from PricewaterhouseCoopers risk assessment. Will forward full report when completed.

From: CLARY, RONALD B
Sent: Thursday, April 29, 2010 4:42 PM
To: CHERRY, WILLIAM
Subject: FW: Privileged & Confidential

From: mark.rauckhorst@us.pwc.com [mailto:mark.rauckhorst@us.pwc.com]
Sent: Wednesday, April 28, 2010 9:02 AM
To: BYNUM, ALVIS J JR
Cc: CLARY, RONALD B; CANNON, MARK R
Subject: Privileged & Confidential

Privileged & Confidential Prepared at the Direction of Legal Counsel

Attached please find the draft executive summary of the report for your review and comment. Distribution to other personnel will be handled by legal counsel as required.

If you have any questions or comments please contact me.

Mark Rauckhorst
Managing Director

Mark Rauckhorst | Advisory | PricewaterhouseCoopers | Telephone: +1 678 419 2087 | Facsimile: +1 813 496 5159 | mark.rauckhorst@us.pwc.com<mailto:mark.rauckhorst@us.pwc.com>

Thoughts don't need paper to take shape.

Exh. 22

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, Corrin F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, Chris Kolbe, and Ruth Ann Keffer, on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Public Service Authority, an Agency of the State of South Carolina (also known as Santee Cooper); W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority; William A. Finn, in his capacity as director of the South Carolina Public Service Authority; Barry Wynn, in his capacity as director of the South Carolina Public Service Authority; Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority; Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority; J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority; Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority; Peggy H. Pinnell, in her capacity as director of the South Carolina Public Service Authority; Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority; David F. Singleton, in his capacity as director of the South Carolina Public Service Authority; Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; South Carolina Electric & Gas Company; SCANA Corporation, SCANA Services, Inc., Defendants.	CASE NO. 2019-CP-23-06675

FEE DISTRIBUTION AMONGST COUNSEL

Any fee awarded by the Court will be distributed amongst Counsel as follows:

FIRM	Percentage
Bell Legal Group, LLC	5.25
Galvin Law Group, LLC	4
McCullough Khan, LLC	5.25
McGowan, Hood & Felder, LLC	18.5
Richardson, Patrick, Westbrook & Brickman, LLC	14.75
RICO Counsel	1.5
Savage, Royall and Sheheen, LLP	13.25
Speights & Solomons, LLC	19
Strom Law Firm, LLC	18.5
TOTAL	100.00%