

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
)	
Jessica S. Cook, et al.,	)	Civil Action No. 2017-CP-25-00348
)	
Plaintiffs,)	
)	
vs.)	
	)	South Carolina Public Service
South Carolina Public Service Authority,	)	Authority's Summons to Third-Party
(also known as Santee Cooper), et al.,	)	Defendant The Electric Cooperatives
	)	of South Carolina, Inc.
)	
Defendants.)	
)	
<hr/>)	
South Carolina Public Service Authority)	
(also known as Santee Cooper),)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
The Electric Cooperatives of South)	
Carolina, Inc.)	
)	
Third-Party Defendant.)	
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TO: THE THIRD-PARTY DEFENDANT NAMED ABOVE:

You are hereby summoned and required to answer the third-party complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this third-party complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the third-party complaint, judgment by default will be rendered against you for the relief demanded in the third-party complaint.

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Columbia, South Carolina
August 16, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
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COUNTY OF HAMPTON)	FOURTEENTH JUDICIAL CIRCUIT
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Jessica S. Cook, et al.,)	Civil Action No. 2017-CP-25-00348
)	
Plaintiffs,)	
)	
vs.)	South Carolina Public Service
	)	Authority's Answer to Plaintiffs' Fifth
South Carolina Public Service Authority,	)	Amended Complaint, Counterclaims,
(also known as Santee Cooper), et al.,	)	Cross-Claims, and Third-Party
	)	Complaint
Defendants.)	
)	
_____)	
South Carolina Public Service Authority)	
(also known as Santee Cooper),)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
The Electric Cooperatives of South)	
Carolina, Inc.)	
)	
Third-Party Defendant.)	
)	
_____)	

Defendant South Carolina Public Service Authority (“Santee Cooper”) and the Director Defendants¹ hereby answer the Plaintiffs’ Fifth Amended Complaint (“the Complaint”). Except as specifically admitted herein, each and every allegation of the Complaint is expressly denied.

¹ The term “Director Defendants” refers to Defendant W. Leighton Lord, III, in his capacity as chairman and director of the South Carolina Public Service Authority, Defendant William A. Finn, in his capacity as director of the South Carolina Public Service Authority, Defendant Barry Wynn, in his capacity as director of the South Carolina Public Service Authority, Defendant Kristofer Clark, in his capacity as director of the South Carolina Public Service Authority, Defendant Merrell W. Floyd, in his capacity as director of the South Carolina Public Service Authority, Defendant J. Calhoun Land, IV, in his capacity as director of the South Carolina Public Service Authority, Defendant Stephen H. Mudge, in his capacity as director of the South Carolina Public Service Authority, Defendant Peggy H. Pinnell, in her capacity as director of the South Carolina

FOR A DEFENSE

1. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraphs 1, 2, 3, 4, 5 and 6 of the Complaint, and, therefore, those allegations are denied.

2. Responding to paragraph 7 of the Complaint, Santee Cooper and the Director Defendants admit that Chris Kolbe is a direct retail customer of Santee Cooper and deny that Ruth Ann Keffer is a direct retail customer of Santee Cooper. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations set forth in paragraph 7, and, therefore, those allegations are denied.

3. Responding to paragraph 8 of the Complaint, Santee Cooper and the Director Defendants crave reference to S.C. Code Ann. §§ 58-31-10 through 58-31-550 (“Santee Cooper’s Enabling Legislation”) and deny any allegations inconsistent therewith. Santee Cooper and the Director Defendants further crave reference to the Power Systems Coordination and Integration Agreement between Santee Cooper and Central (“the Coordination Agreement”)² and deny any allegations inconsistent therewith. Any remaining allegations in paragraph 8 are denied.

4. Santee Cooper and the Director Defendants admit the allegations in paragraph 9 of the Complaint to the extent current and former board members are listed in that paragraph. Defendants deny any allegations related to purported conduct in that paragraph.

Public Service Authority, Defendant Dan J. Ray, in his capacity as director of the South Carolina Public Service Authority, Defendant David F. Singleton, in his capacity as director of the South Carolina Public Service Authority, and Defendant Jack F. Wolfe, Jr., in his capacity as director of the South Carolina Public Service Authority.

² The Coordination Agreement consists of the initial December 31, 1980 Coordination Agreement, Amendments to the Coordination Agreement dated April 17, 1984, February 25, 1985, July 1, 1985, October 24, 1986, March 31, 1988, and May 20, 2013, and related Memoranda of Understanding and Agreement (“MOU&As”) including MOU&As dated January 11, 2001, September 28, 2009, March 18, 2010, July 23, 2013, and September 24, 2015.

5. Responding to paragraph 10 of the Complaint, Santee Cooper and the Director Defendants admit that Defendant Central Electric Power Cooperative, Inc. (“Central”) is a South Carolina corporation with its principal place of business in Columbia, South Carolina, and that Central does business in all 46 Counties in the state. Santee Cooper and the Director Defendants further admit that referenced mission statement is what Central states is its mission. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 10, and, therefore, those allegations are denied.

6. Santee Cooper and the Director Defendants admit the allegations in paragraphs 11, 12, 13, and 14 of the Complaint, on information and belief, except that they lack knowledge or information sufficient to form a belief as to allegations about SCE&G’s business and property in Hampton County or Palmetto’s property in Hampton County, and, therefore, those allegations are denied.

7. Responding to paragraph 15 of the Complaint, Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 15, and, therefore, those allegations are denied.

8. Responding to paragraph 16 of the Complaint, Santee Cooper and the Director Defendants admit Santee Cooper provides electrical service to customers in South Carolina. The remaining allegations of Paragraph 16 of the Complaint set forth legal conclusions to which no responsive pleading is required. To the extent that any response is required, the remaining allegations in paragraph 16 are denied.

9. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 17 of the Complaint, and, therefore, those allegations are denied.

10. Paragraph 18 of the Complaint sets forth legal conclusions to which no responsive pleading is required. To the extent that any response is required, the allegations in paragraph 18 are denied.

11. Responding to paragraph 19 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper, by resolution of its board of directors, decided to suspend construction of the Project. Santee Cooper and the Director Defendants deny that the decision was made collectively with SCE&G. Santee Cooper and the Director Defendants admit that SCE&G abandoned the Project. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 19, and, therefore, those allegations are denied.

12. Santee Cooper and the Director Defendants accept the allegations of paragraph 20 as true as alleged regarding the production of electricity.

13. Responding to paragraph 21 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper provides wholesale electric power to Central and that Central is Santee Cooper's largest customer. Santee Cooper and the Director Defendants further admit that Central provides electric power to its member cooperatives which in turn provide electric power to their customers, who are located in all 46 counties in South Carolina. Santee Cooper and the Director Defendants also admit that Santee Cooper provides electric power to other wholesale and industrial customers and to certain retail customers. The remaining allegations in paragraph 21 are denied.

14. Responding to paragraph 22 of the Complaint, Santee Cooper and the Director Defendants admit that the Clean Energy Act included tax incentives for the addition of nuclear generation. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 22, and, therefore, those allegations are denied.

15. Responding to paragraph 23 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper and SCE&G are joint owners of V.C. Summer 1 and were joint owners of V.C. Summer 2 and 3. Any remaining allegations in paragraph 23 are denied.

16. Responding to paragraph 24 of the Complaint, Santee Cooper and the Director Defendants admit that the AP1000, developed by Westinghouse, a subsidiary of Toshiba, was selected from among other designs for the new nuclear development at the Project and that Westinghouse's responsibilities were defined in the Engineering Procurement and Construction Agreement. Any remaining allegations in paragraph 24 are denied.

17. Responding to paragraph 25 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper and SCE&G became joint owners of the Project, with Santee Cooper being a 45 percent owner and SCE&G being a 55 percent owner. Any other allegations of paragraph 25 are denied.

18. Responding to paragraph 26 of the Complaint, Santee Cooper and the Director Defendants admit that SCE&G was charged with primary responsibility for project management and oversight. Santee Cooper and the Director Defendants further crave reference to the Bridge Agreement (and amendments thereto), Limited Agency Agreements, Design and Construction Agreement, and Operating and Decommissioning Agreements between Santee

Cooper and SCE&G regarding the roles, rights, duties, and obligations of the parties to those agreements with regard to the Project and deny any allegations in paragraph 26 that are inconsistent therewith. Any remaining allegations of paragraph 26 are denied.

19. Responding to paragraph 27 of the Complaint, Santee Cooper and the Director Defendants admit that on July 31, 2017, Santee Cooper announced that it was suspending construction of the Project and that on that same day SCE&G announced it was ceasing construction of the Project. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 27, and, therefore, those allegations are denied.

20. Responding to paragraph 28 of the Complaint, Santee Cooper and the Director Defendants admit that providing Santee Cooper's customers with economical and reliable energy and additional base load capacity were among the reasons for Santee Cooper entering into the Project. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 28, and, therefore, those allegations are denied.

21. Santee Cooper and the Director Defendants deny the allegations in paragraph 29 of the Complaint.

22. Santee Cooper and the Director Defendants deny the allegations in paragraph 30 of the Complaint.

23. Santee Cooper and the Director Defendants deny the allegations in paragraph 31 of the Complaint.

24. Responding to paragraph 32 of the Complaint, Santee Cooper and the Director Defendants admit that in 2008, SCE&G, for itself and as agent for Santee Cooper, entered

into the EPC with a consortium including Westinghouse. With regard to the remaining allegations in paragraph 32, Santee Cooper and the Director Defendants crave reference to the EPC and deny any remaining allegations inconsistent therewith.

25. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 33, and, therefore, those allegations are denied.

26. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 34, and, therefore, those allegations are denied.

27. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 35, and, therefore, those allegations are denied.

28. Responding to paragraph 36 of the Complaint, Santee Cooper and the Director Defendants admit that SCANA, SCE&G, and responsible executives at those entities were charged with supervision, oversight, and management of the Project for SCE&G and Santee Cooper customers alike. Any remaining allegations in paragraph 36 are denied.

29. Responding to paragraph 37 of the Complaint, Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations about SCE&G's or SCANA's representations to federal licensing authorities in March 2008, and, therefore, these allegations are denied. The remaining allegations in paragraph 37 are denied.

30. Responding to paragraph 38 of the Complaint, Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the meaning of the term “pre-nuclear construction,” and, therefore, those allegations are denied.

31. Santee Cooper and the Director Defendants deny the allegations in paragraph 39 of the Complaint.

32. Santee Cooper and the Director Defendants deny the allegations in paragraph 40 of the Complaint.

33. Santee Cooper and the Director Defendants deny the allegations in paragraph 41 of the Complaint.

34. Responding to paragraph 42 of the Complaint, Santee Cooper and the Director Defendants admit that, beginning in or around 2010, Santee Cooper was attempting to identify a party to purchase a percentage of its ownership of the project. Santee Cooper and the Director Defendants deny the remaining allegations in paragraph 42.

35. Responding to paragraph 43 of the Complaint, Santee Cooper and the Director Defendants admit that in or around 2011 Santee Cooper engaged in negotiations with prospective purchasers of Santee Cooper’s ownership interest in the Project. Santee Cooper and the Director Defendants further admit that SCE&G imposed certain terms or conditions on the prospective sale of a portion of Santee Cooper’s ownership interest. The remaining allegations in paragraph 43 are denied.

36. Responding to paragraph 44 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper’s efforts to sell a percentage of its ownership interest in the Project led to negotiations with Duke Power Corporation that did not result in a sale. The remaining allegations in paragraph 44 are denied.

37. Responding to paragraph 45 of the Complaint, Santee Cooper and the Director Defendants admit that SCE&G and Santee Cooper entered into an agreement whereby SCE&G agreed to purchase a 5% portion of total ownership in the Project from Santee Cooper's 45% ownership interest after Unit 2 of the Project became operational. Any remaining allegations in paragraph 45 are denied.

38. Responding to paragraph 46 of the Complaint, Santee Cooper and the Director Defendants crave reference to the Santee Cooper Board's Resolution titled "Sale of an Undivided Ownership Interest in V.C. Summer Units 2 and 3 to South Carolina Electric & Gas Company," dated January 27, 2014, which among other things states that "... the Board of Directors declares that the real and personal property to be sold to SCE&G to be unnecessary for the purposes of the Authority's development," and deny any allegations in paragraph 46 that differ from this statement. Any remaining allegations in paragraph 46 are denied.

39. Responding to paragraph 47 of the Complaint, Santee Cooper and the Director Defendants admit that the Project experienced certain delays, increased costs, and other setbacks. The remaining allegations in paragraph 47 are denied.

40. Responding to paragraph 48 of the Complaint, Santee Cooper and the Director Defendants admit that in 2012 Santee Cooper authorized SCE&G, as its agent, to give full notice to proceed to the consortium under the EPC, and that, subsequent to that authorization, SCE&G gave full notice to proceed to the consortium. Any remaining allegations in paragraph 48 are denied.

41. Responding to paragraph 49 of the Complaint, Santee Cooper and the Director Defendants admit that it completed the sale of bonds totaling more than \$1.8 billion in 2013, and more than \$1.3 billion in 2014. The remaining allegations in paragraph 49 are denied.

42. Responding to paragraph 50 of the Complaint, Santee Cooper and the Director Defendants admit that the EPC was amended in October 2015, and the amendment included a fixed price option that could be exercised by the owners according to the terms and conditions of the parties' agreement. Santee Cooper and the Director Defendants crave reverence to the October 2015 EPC Amendment and the 2015 "Chairman and CEO Letter" referred to in paragraph 50 and deny any allegations inconsistent therewith. Any remaining allegations in paragraph 50 are denied.

43. Responding to paragraph 51 of the Complaint, Santee Cooper and the Director Defendants crave reverence to the October 2015 EPC Amendment and deny any allegations inconsistent therewith.

44. Paragraph 52 of the Complaint consists of fifteen subparagraphs which consist of some factual allegations interspersed with argumentative conclusions. The argumentative conclusions require no response and are denied on that basis. With regard to non-argumentative factual allegations, Santee Cooper and the Director Defendants respond to the subparagraphs as follows:

(a) Responding to paragraph 52.a., Santee Cooper and the Director Defendants admit that Santee Cooper and SCE&G never received a fully-integrated, resource-loaded schedule from the consortium. The remaining allegations in paragraph 52.a. are denied.

(b) Responding to paragraph 52.b. Santee Cooper and the Director Defendants admit that rates charged by Santee Cooper incorporated certain costs incurred by Santee Cooper relating to the Project. The remaining allegations in paragraph 52.b. are denied.

(c) Responding to paragraph 52.c., Santee Cooper and the Director Defendants admit that Santee Cooper sought to sell a portion of its ownership to a third party and

SCE&G imposed certain terms and conditions on the sale. The remaining allegations in paragraph 52.c. are denied.

(d) Responding to paragraph 52.d., Santee Cooper and the Director Defendants admit that Santee Cooper and SCE&G entered into an agreement whereby SCE&G agreed to purchase a 5% portion of total ownership of the Project from Santee Cooper's 45% ownership interest after Unit 2 of the Project became operational. Unit 2 did not become operational and, therefore, the 5% of ownership interest in the Project sold by Santee Cooper or purchased by SCE&G and ownership was never transferred, resulting in Santee Cooper continuing to retain a 45% ownership interest in the Project and making it responsible for 45% of the Project's costs. The remaining allegations in paragraph 52.d. are denied.

(e) Responding to paragraph 52.e., Santee Cooper and the Director Defendants admit that Santee Cooper is required by law to fund the costs of its 45% ownership interest in the Project, including debt service, through revenues that are collected from customers. The remaining allegations in paragraph 52.e. are denied.

(f) Responding to paragraph 52.f., Santee Cooper and the Director Defendants admit that in 2013 Santee Cooper and Central executed an amendment to the Coordination Agreement that governs the relationship between them, allowing for refinancing of the Project in a manner favorable to Central and Santee Cooper's other customers. The remaining allegations in paragraph 52.f. are denied.

(g) Responding to paragraph 52.g., Santee Cooper and the Director Defendants admit that in 2013 Central agreed to pay for costs of the Project as allocated pursuant to the Coordination Agreement even if the Project did not become operational. The remaining allegations in paragraph 52.g. are denied.

(h) Responding to paragraph 52.h., Santee Cooper and the Director Defendants admit that Santee Cooper had concerns about cost overruns and design delays and their effects on the Project schedule. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations regarding what was represented by Byrne to Wall Street, and, therefore, these allegations are denied. The remaining allegations in paragraph 52.h. are denied.

(i) Responding to paragraph 52.i., Santee Cooper and the Director Defendants admit that the Project experienced delays in the 2013 and 2014 time frame, and Santee Cooper was concerned about and took action to try to correct the delays and associated costs. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations regarding SCE&G and its executives, and, therefore, those allegations are denied. The remaining allegations in paragraph 52.i. are denied.

(j) Responding to paragraph 52.j., Santee Cooper and the Director Defendants admit that in 2015 attorney George Wenick, as counsel for Santee Cooper and SCE&G, hired Bechtel Corporation (“Bechtel”) to provide consulting services in accordance with a Professional Services Agreement, and Santee Cooper received Bechtel’s final written report in February 2016. Santee Cooper and the Director Defendants further admit that the owners agreed to amend the EPC in October 2015, the EPC included a fixed price option, and in June 2016 Santee Cooper’s board of directors voted in support of exercise of the fixed price option and continued with the Project. Santee Cooper and the Director Defendants further admit that Santee Cooper provided the Bechtel Report to the Governor upon his demand. Santee Cooper and the Director Defendants crave reference to the Bechtel Report and deny any allegations in paragraph 52.j. inconsistent therewith. The remaining allegations in paragraph 52.j. are denied.

(k) Responding to paragraph 52.k., Santee Cooper and the Director Defendants admit that Santee Cooper expressed its concerns about project management, the contractors' performance, and other issues. Santee Cooper and the Director Defendants further admit that the owners agreed to amend the EPC in October 2015, the EPC included a fixed price option, and in June 2016 Santee Cooper's board of directors voted in support of exercise of the fixed price option and continued with the Project. The remaining allegations in paragraph 52.k. are denied.

(l) Santee Cooper and the Director Defendants deny the allegations in paragraph 52.l. of the Complaint.

(m) Responding to paragraph 52.m., Santee Cooper and the Director Defendants deny the allegations in paragraph 52.m. that relate to Santee Cooper, Carter, and the Director Defendants. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 52.m. that relate to other persons or entities, and, therefore, these allegations are denied.

(n) Responding to paragraph 52.n., Santee Cooper and the Director Defendants crave reference to the letter from Governor McMaster that is reference therein and deny any allegations in paragraph 52.n. that are inconsistent therewith. Santee Cooper and the Director Defendants further admit that Lord resigned from the Santee Cooper Board in December 2017. The remaining allegations in paragraph 52.n. are denied.

(o) Responding to paragraph 52.o., Santee Cooper and the Director Defendants admit that Central agreed to pay its portion of the cost the Project pursuant to the Coordination Agreement as amended in 2013. Santee Cooper and the Director Defendants deny the allegations in paragraph 52.o. of the Complaint.

Any remaining allegations in paragraph 52 are denied.

45. Santee Cooper and the Director Defendants deny the allegations in paragraph 53 of the Complaint.

46. Responding to paragraph 54 of the Complaint, Santee Cooper and the Director Defendants admit that Central purchases electric power from Santee Cooper and sells that power to member cooperatives. Santee Cooper and the Director Defendants further admit that Central is Santee Cooper's largest customer and that Central was involved in decisions made by Santee Cooper. Santee Cooper and the Director Defendants also admit that Central has influence on Santee Cooper's decisions regarding the Project, and that Central monitored and was kept informed of the Project. The remaining allegations in paragraph 54 are denied.

47. Paragraph 55 of the Complaint states legal conclusions that require no response. To the extent that any response is required, any remaining allegations in paragraph 55 are denied for lack of information sufficient to form a belief as to the truth thereof.

48. Santee Cooper and the Director Defendants admit the allegations in paragraph 56 of the Complaint.

49. Responding to paragraph 57 of the Complaint, Santee Cooper and the Director Defendants admit that Central and its member cooperatives had ample access to information regarding the Project from its inception. The remaining allegations in paragraph 57 are denied for lack of information sufficient to form a belief as to the truth thereof.

50. Responding to paragraph 58 of the Complaint, Santee Cooper and the Director Defendants admit that Central's Board reported dissatisfaction with Santee Cooper in 2012 during Santee Cooper's annual Central survey. Santee Cooper and the Director Defendants

are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 58 of the Complaint, and, therefore, those allegations are denied.

51. Responding to paragraph 59 of the Complaint, Santee Cooper and the Director Defendants admit that the Coordination Agreement was amended in 2013 and that Central agreed to pay for the Project regardless whether the Project was completed, with knowledge that of the status of the Project, including scheduling delays and cost overruns. Santee Cooper and the Director Defendants crave reference to the Coordination Agreement and deny any allegations in paragraph 59 inconsistent therewith. Any remaining allegations in paragraph 59 are denied.

52. Responding to paragraph 60 of the Complaint, Santee Cooper and the Director Defendants admit that in October 2014 Central was made aware that the estimate to complete the Project at that time exceeded prior proposals and that Central did not act to suspend the Project or suspend payments from Central. Any remaining allegations in paragraph 60 are denied.

53. Santee Cooper and the Director Defendants deny the allegations in paragraph 61 of the Complaint.

54. Paragraph 62 of the Complaint states legal conclusions that require no response. To the extent that any response is required, Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 62 of the Complaint, and, therefore, those allegations are denied.

55. Responding to paragraph 63 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper has invested in the Project and that it will be required to recover its costs and debt service associated with the Project through revenues collected from its customers. As to the allegations regarding Central, the electric cooperatives, and

customers of electric cooperatives, Santee Cooper and the Director Defendants admit only that Central's obligations are determined in accordance with the Coordination Agreement. Any remaining allegations in paragraph 63 are denied.

56. Responding to paragraph 64 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper's rates were increased by Santee Cooper's Board in April 2016 and April 2017, in accordance with S.C. Code Ann. §§ 58-31-30(13) and 58-31-360, and crave reference to those and prior rate schedules and deny any allegations inconsistent therewith. Any remaining allegations in paragraph 64 are denied.

57. Responding to paragraph 65 of the Complaint, Santee Cooper and the Director Defendants deny that SCE&G agreed to purchase a 5% portion of total ownership of the Project from Santee Cooper's 45% ownership interest in 2014; instead, the 2014 agreement provided that the purchase, sale, and transfer of ownership were to occur only after the first of two units began to generate electricity. Accordingly, Santee Cooper and the Director Defendants admit that Santee Cooper did not reduce its financial responsibility to reflect a transfer of a 5% ownership share. Any remaining allegations in paragraph 65 are denied.

58. Responding to paragraph 66 of the Complaint, Santee Cooper and the Director Defendants deny that Santee Cooper has funded a 5% interest owned by SCE&G. Santee Cooper and the Director Defendants admit that SCE&G has not paid for a 5% interest; instead, the 2014 agreement provided that the purchase, sale, and transfer of ownership were to occur only after the first of two units began to generate electricity. Any remaining allegations in paragraph 66 are denied.

59. Responding to paragraph 67 of the Complaint, Santee Cooper and the Director Defendants crave reference to the cited code section and deny any allegations inconsistent

therewith. Santee Cooper and the Director Defendants deny that the cited code section applies to Santee Cooper.

60. Responding to paragraph 68 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper's rate setting authority is governed by statute, including S.C. Code Ann. §§ 58-31-30(13) and 58-31-360. As to § 58-31-55(A)(3)(a), Santee Cooper and the Director Defendants admit only that it contains the standards for the discharge of Santee Coopers' directors' duties and refers to rates only in the context of the factors to be balanced by a director in determining what he or she reasonably believes to be in the best interest of Santee Cooper. The remainder of the allegations in paragraph 48 state legal conclusions which require no response. To the extent that a response is required, the remaining allegations in paragraph 68 are denied.

61. Responding to paragraph 69 of the Complaint, Santee Cooper and the Director Defendants crave reference to S.C. Code Ann. § 58-31-30(13) and deny any allegations inconsistent therewith.

62. Responding to paragraph 70 of the Complaint, Santee Cooper and the Director Defendants crave reference to S.C. Code Ann. § 58-31-55, which requires a balancing of interests including those quoted in the Complaint, and deny any allegations inconsistent therewith.

63. Responding to paragraph 71 of the Complaint, Santee Cooper and the Director Defendants crave reference to S.C. Code Ann. § 58-31-360 and deny any allegations inconsistent therewith.

64. Responding to paragraph 72 of the Complaint, Santee Cooper and the Director Defendants admit that as of July 31, 2017, Santee Cooper has included and collected in rates charged to customers approximately \$540 million for the recovery of costs associated with

the Project, in accordance with its enabling legislation. Santee Cooper further admits that pursuant to its enabling legislation, the rates it charges its customers must be at least sufficient to provide for the payment of all of Santee Cooper's expenses, the conservation, maintenance and operation of Santee Cooper's facilities and properties, the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the terms and provisions of any agreements made by Santee Cooper with the purchasers or holders of any such notes, bonds, or other evidences of indebtedness or obligation. Additionally, with regard to the rates Santee Cooper charges to Central, Santee Cooper and the Director Defendants admit that the methodology for determining Central's payment obligations has been agreed upon by Central in the Coordination Agreement. Santee Cooper and the Director Defendants further admit that its retail rates and the rate it charges Central under the Coordination Agreement will necessarily include all of Santee Cooper's costs and expenses related to the Project as a component of the rates, along with all of Santee Cooper's other costs and other expenses. Any remaining allegations in paragraph 72 are denied.

65. Santee Cooper and the Director Defendants deny the allegations in paragraph 73 of the Complaint that relate to Santee Cooper. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 73, and, therefore, those allegations are denied.

66. Responding to paragraph 74 of the Complaint, Santee Cooper and the Director Defendants admit that pursuant to a 2014 letter agreement SCE&G agreed to purchase and Santee Cooper agreed to sell and transfer a 5% portion of total ownership of the Project from Santee Cooper's 45% ownership interest after Unit 2 of the Project became operational. Any remaining allegations in paragraph 74 are denied.

67. Santee Cooper and the Director Defendants deny the allegations in paragraph 75 of the Complaint.

68. Santee Cooper and the Director Defendants deny the allegations in paragraph 76 of the Complaint.

69. Santee Cooper and the Director Defendants deny the allegations in paragraph 77 of the Complaint.

70. Santee Cooper and the Director Defendants deny the allegations in paragraph 78 of the Complaint.

71. Responding to paragraph 79 of the Complaint, Santee Cooper and the Director Defendants admit that certain Santee Cooper executives, including Carter, have received incentive pay and that related in part to the Project. Santee Cooper and the Director Defendants further admit that Santee Cooper paid its 45% ownership share of the costs of the Project, which included certain costs related to SCANA executive bonuses. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 79 regarding SCANA and SCE&G and their shareholders and executives, and, therefore, deny those allegations. The remaining allegations in paragraph 79 are denied.

72. Santee Cooper and the Director Defendants deny the allegations in paragraph 80 of the Complaint which relate to Santee Cooper and harm to Plaintiffs resulting from the conduct of Santee Cooper or the Director Defendants. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 80, and, therefore, those allegations are denied.

73. Responding to paragraphs 81, 82, and 83 of the Complaint, Santee Cooper and the Director Defendants deny the existence of a properly defined class or subclasses, including

the alleged exclusions in the subparts of paragraph 83. Any remaining allegations in paragraphs 81, 81, and 83 are denied.

74. Santee Cooper and the Director Defendants deny the allegations in paragraphs 84, 85, 86, 87, 88, 89, and 90.

75. Santee Cooper and the Director Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 91, and, therefore, those allegations are denied.

76. Santee Cooper and the Director Defendants deny the allegations in paragraphs 92, 93, 94, 95, and 96 of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

77. Responding to paragraph 97 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

78. Responding to paragraph 98 of the Complaint, Santee Cooper and the Director Defendants admit that the Plaintiffs seek the declaratory judgment stated therein but deny that the Plaintiffs are entitled to such relief or any relief whatsoever.

79. Responding to paragraph 99 of the Complaint, Santee Cooper and the Director Defendants admit that the Plaintiffs seek the declaratory judgment stated therein but deny that the Plaintiffs are entitled to such relief or any relief whatsoever.

80. Santee Cooper and the Director Defendants deny the allegations in paragraph 100 of the Complaint.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

81. Responding to paragraph 101 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

82. Santee Cooper and the Director Defendants deny the allegations in paragraphs 102, 103, 104, 105, 106, and 107 of the Complaint.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

83. Responding to paragraph 108 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

84. Santee Cooper and the Director Defendants deny the allegations in paragraphs 109, 110, 111, 112, 113, 114 and 115 of the Complaint.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

85. Responding to paragraph 116 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

86. Santee Cooper and the Director Defendants deny the allegations in paragraphs 117, 118, 119, 120, 121, and 122 of the Complaint.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

87. Responding to paragraph 123 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

88. Paragraphs 124 and 125 of the Complaint state a legal conclusion and require no response. To the extent a response may be required, Santee Cooper and the Director Defendants deny the allegations in paragraphs 124 and 125.

89. Santee Cooper and the Director Defendants deny the allegations in paragraphs 126, 127, 128, 129, and 130 of the Complaint.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

90. Responding to paragraph 131 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

91. Paragraph 132 of the Complaint states a legal conclusion and requires no response. To the extent a response may be required, Santee Cooper and the Director Defendants deny the allegations in paragraphs 132.

92. Santee Cooper and the Director Defendants deny the allegations in paragraphs 133, 134, 135, and 136 of the Complaint.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

93. Responding to paragraph 137 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

94. Responding to paragraph 138 of the Complaint, Santee Cooper and the Director Defendants admit that Central sells power to the cooperatives. The remaining allegations in paragraph 138 are denied.

95. Santee Cooper and the Director Defendants deny the allegations in paragraphs 139, 140, 141, 142, and 143 of the Complaint.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION

96. Paragraphs 144, 145, 146, 147, 148 and 149 relate to a claim asserted only against Palmetto and thus require no response from Santee Cooper and the Director Defendants. To the extent those allegations and claims are deemed to contain statements pertaining to Santee Cooper and the Director Defendants, these paragraphs are denied.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION

97. Responding to paragraph 150 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

98. Responding to paragraph 151 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper and SCE&G were owners of the Project, with

Santee Cooper being a 45 percent owner and SCE&G being a 55 percent owner. Any other allegations of paragraph 151 are denied.

99. Paragraph 152 of the Complaint states legal conclusions which require no response. To the extent that a response is required, the allegations in paragraph 152, are denied.

100. Santee Cooper and the Director Defendants deny the allegations in paragraphs 153, 154, 155, and 156 of the Complaint.

FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION

101. Paragraphs 157, 158, 159, 160, 161, 162, and 163 relate to a claim asserted only against Central and thus require no response from Santee Cooper and the Director Defendants. To the extent those allegations and claims are deemed to contain statements pertaining to Santee Cooper and the Director Defendants, these paragraphs are denied.

FOR A FIRST DEFENSE TO THE ELEVENTH CAUSE OF ACTION

102. Paragraphs 164, 165, 166, 167, 168, 169, and 170 relate to a claim asserted only against Palmetto and thus require no response from Santee Cooper and the Director Defendants. To the extent those allegations and claims are deemed to contain statements pertaining to Santee Cooper and the Director Defendants, these paragraphs are denied.

FOR A FIRST DEFENSE TO THE TWELFTH CAUSE OF ACTION

103. Paragraphs 171, 172, 173, 174, 175, and 176 relate to a claim asserted only against SCANA, SCE&G, and SCANA Services and thus require no response from Santee Cooper and the Director Defendants. To the extent those allegations and claims are deemed to contain statements pertaining to Santee Cooper and the Director Defendants, these paragraphs are denied.

FOR A FIRST DEFENSE TO THE THIRTEENTH CAUSE OF ACTION

104. Paragraphs 177, 178, 179, 180, 181, 182, 183, 184 and 185 relate to a claim asserted only against SCANA, SCE&G, and SCANA Services and thus require no response from Santee Cooper and the Director Defendants. To the extent those allegations and claims are deemed to contain statements pertaining to Santee Cooper and the Director Defendants, these paragraphs are denied.

FOR A FIRST DEFENSE TO THE FOURTEENTH CAUSE OF ACTION

105. Responding to paragraph 186 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

106. Santee Cooper and the Director Defendants deny the allegations in paragraphs 187, 188, 189, and 190 of the Complaint.

FOR A FIRST DEFENSE TO THE FIFTEENTH CAUSE OF ACTION

107. Responding to paragraph 191 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

108. Santee Cooper and the Director Defendants deny the allegations in paragraphs 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, and 203 of the Complaint.

FOR A FIRST DEFENSE TO THE SIXTEENTH CAUSE OF ACTION

109. Responding to paragraph 204 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

110. Paragraph 205 of the Complaint states a legal conclusion, and, as such requires no response. To the extent a response is required, Santee Cooper and the Director Defendants crave reference to the South Carolina Constitution, the statutory law of South Carolina, and the case law of South Carolina and deny any allegation in paragraph 205 inconsistent therewith.

111. Santee Cooper and the Director Defendants deny the allegations in paragraphs 206 and 207 of the Complaint.

112. Responding to Plaintiffs' prayer for relief, Santee Cooper and the Director Defendants deny that Plaintiffs are entitled to the relief requested therein, or to any relief whatsoever.

FOR A FIRST DEFENSE

113. Plaintiffs have failed to state facts sufficient to constitute a cause of action against Santee Cooper or the Director Defendants, and Plaintiffs' Complaint should, therefore, be dismissed.

FOR A SECOND DEFENSE

114. Some or all of the claims asserted in Plaintiffs' Complaint are barred under the doctrine of sovereign immunity, except to the extent expressly permitted under the South Carolina Tort Claims Act.

FOR A THIRD DEFENSE

115. Some or all of the claims asserted in Plaintiffs' Complaint are barred and/or limited under the South Carolina Tort Claims Act.

- (a) Some or all of the claims asserted in Plaintiffs' Complaint are barred by S.C. Code Ann. § 15-78-60(4), which provides that Santee Cooper and the Director Defendants are not liable for a loss resulting from a governmental entity's "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies." Santee Cooper asserts that it is a governmental entity and the Director Defendants assert that they are members of the board of directors of that governmental entity. Santee Cooper and the Director Defendants further assert that their actions constituted the adoption, enforcement, or compliance with a law, charter, provision, ordinance, resolution, rule, regulation, or written policies.

Therefore, the claims asserted in Plaintiffs' Complaint are barred by sovereign immunity.

- (b) Some or all of the claims asserted in Plaintiffs' Complaint are barred by S.C. Code Ann. § 15-78-60(5), which provides that Santee Cooper and the Director Defendants are not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." Santee Cooper asserts that it is a governmental entity and the Director Defendants assert that they are members of the board of directors of that governmental entity. Santee Cooper and the Director Defendants further assert that their actions constituted the exercise of discretion or judgment by Santee Cooper or its directors, officers and/or employees, or the performance or failure to perform any act or service which is in the discretion or judgment of Santee Cooper or its directors, officer and/or employees. Therefore, the claims asserted in Plaintiffs' Complaint are barred by sovereign immunity.
- (c) Some or all of the claims asserted in Plaintiffs' Complaint are barred by S.C. Code Ann. § 15-78-60(13), which provides that Santee Cooper and the Director Defendants are not liable for a loss resulting from "regulatory inspection powers or functions." Santee Cooper asserts that it is a governmental entity and the Director Defendants assert that they are members of the board of directors of that governmental entity. Santee Cooper and the Director Defendants further assert that their actions constituted the exercise of regulatory inspection powers or functions by Santee Cooper or its directors, officers and/or employees. Therefore, the claims asserted in Plaintiffs' Complaint are barred by sovereign immunity.
- (d) To the extent Plaintiffs seek to hold Santee Cooper responsible for the actions of any of the Director Defendants, such liability barred by S.C. Code Ann. § 15-78-60(38), which provides that Santee Cooper is not liable for a loss resulting from "conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57." Santee Cooper asserts that it is a governmental entity. Therefore, any attempt to hold Santee Cooper liable for the conduct of any of the Director Defendants is barred by sovereign immunity.
- (e) Some or all of the damages recoverable for the claims asserted in Plaintiffs' Complaint are limited by S.C. Code Ann. § 15-78-120(a)(2), to a maximum aggregate recovery of \$600,000.

- (f) The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-120(b), bars the Plaintiffs' claim for punitive damages.

FOR A FOURTH DEFENSE

116. One or more to the Plaintiffs lacks standing to assert the claims asserted in Plaintiffs Complaint.

FOR A FIFTH DEFENSE

117. Some or all of the claims asserted in Plaintiffs' Complaint are subject to binding arbitration.

FOR A SIXTH DEFENSE

118. Some or all of the claims asserted in the Plaintiffs' Complaint are barred because Santee Cooper is expressly required by S.C. Code Ann. §§ 58-31-30(13) and 58-31-360, to set its rates at a level that is at least sufficient to provide for the payment of all of Santee Cooper's expenses, the conservation, maintenance and operation of Santee Cooper's facilities and properties, the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the terms and provisions of any agreements made by Santee Cooper with the purchasers or holders of any such notes, bonds, or other evidences of indebtedness or obligation.

FOR A SEVENTH DEFENSE

119. Some or all of the claims asserted in the Plaintiffs' Complaint are barred because, through S.C. Code Ann. § 58-31-360, the State of South Carolina expressly covenanted and agreed with the holders of Santee Cooper's notes, bonds, evidences of indebtedness or other obligations that the State will not alter, limit or restrict the power of Santee Cooper to, and Santee Cooper shall, fix, establish, maintain and collect rents, tolls, rates and charges for the use of the facilities of or for the services rendered or for any commodities furnished by Santee Cooper, at

least sufficient to provide for payment of all expenses of Santee Cooper, the conservation, maintenance and operation of its facilities and properties and the payment of the principal of and interest on its notes, bonds, evidences of indebtedness or other obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, evidences of indebtedness or obligations heretofore or hereafter issued or incurred.

FOR AN EIGHTH DEFENSE

120. Some or all of the claims asserted in Plaintiffs' Complaint are barred under the Business Judgment Rule.

FOR A NINTH DEFENSE

121. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the applicable Statute of Limitations.

FOR A TENTH DEFENSE

122. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the Filed Rate Doctrine.

FOR AN ELEVENTH DEFENSE

123. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Santee Cooper's relationship with its direct retail electric customers is governed by the Service Tariff, which is comprised of the Rate Schedules and the Terms and Conditions of Retail Electric Service. Santee Cooper has met all of its obligations and Plaintiffs' claims are barred under the Tariff.

FOR A TWELFTH DEFENSE

124. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Santee Cooper's relationship with Central is governed by the Coordination Agreement.

Santee Cooper has met all of its obligations and Plaintiffs' claims are barred under the Coordination Agreement.

FOR A THIRTEENTH DEFENSE

125. Some or all of the claims asserted in Plaintiffs' Complaint are barred because no contract exists between Plaintiffs and Santee Cooper.

FOR A FOURTEENTH DEFENSE

126. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Santee Cooper and the Director Defendants fully complied with their statutory duties and obligations, including statutory requirement to collect rates sufficient for payment of all expenses, payment of principal and interest on bonds and other debt, and satisfaction of obligations to creditors and compliance with best interests test.

FOR A FIFTEENTH DEFENSE

127. The claims asserted against the Director Defendants are barred by the provisions of S.C. Code Ann. § 58-31-55(D).

FOR A SIXTEENTH DEFENSE

128. The claims asserted against the Director Defendants are limited by the provisions of S.C. Code Ann. § 58-31-57.

FOR A SEVENTEENTH DEFENSE

129. The Breach of Fiduciary Duty claim asserted in Plaintiffs' Complaint is barred because the Director Defendants did not owe Plaintiffs a fiduciary duty.

FOR AN EIGHTEENTH DEFENSE

130. The Breach of Fiduciary Duty claim asserted in Plaintiffs' Complaint is barred because S.C. Code Ann. § 58-31-57 creates only a cause of action for breach of the statutory

duties of the Director Defendants set forth in sections 58-31-55 and 58-31-56, and such statutory duties are owed by the Director Defendants only to Santee Cooper.

FOR A NINETEENTH DEFENSE

131. The Breach of Fiduciary Duty claim asserted in Plaintiffs' Complaint is barred because the Director Defendants have not received any ill-gotten gains.

FOR A TWENTIETH DEFENSE

132. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Plaintiffs failed to adhere to administrative remedies and/or process regarding Santee Cooper's rate making.

FOR A TWENTY-FIRST DEFENSE

133. Some or all of the claims asserted in Plaintiffs' Complaint are barred because the Project was specifically identified as a shared resource in the Coordination Agreement.

FOR A TWENTY-SECOND DEFENSE

134. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the Voluntary Payment Doctrine.

FOR A TWENTY-THIRD DEFENSE

135. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Santee Cooper's delegation of management of the Project was lawful and authorized by S.C. Code Ann. § 58-31-200.

FOR A TWENTY-FOURTH DEFENSE

136. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Santee Cooper fully adhered to statutory procedure and due process requirements,

including providing any required notice and providing an opportunity to object regarding its ratemaking powers.

FOR A TWENTY-FIFTH DEFENSE

137. Some or all of the claims asserted in Plaintiffs' Complaint are barred under the unmistakability doctrine.

FOR A TWENTY-SIXTH DEFENSE

138. Some or all of the claims asserted in Plaintiffs' Complaint are barred under the reserved powers doctrine.

FOR A TWENTY-SEVENTH DEFENSE

139. Some or all of the claims asserted in Plaintiffs' Complaint are barred under the sovereign acts doctrine.

FOR A TWENTY-EIGHTH DEFENSE

140. Santee Cooper and the Director Defendants would show that any injury or damage suffered by Plaintiffs, if any, was due to or caused by or occasioned by the intervening or superseding actions or omissions of SCE&G, and that Santee Cooper and the Director Defendants are not responsible for SCE&G's actions or omissions, and therefore, Plaintiffs' claims should be barred or reduced accordingly.

FOR A TWENTY-NINTH DEFENSE

141. Santee Cooper and the Director Defendants would show that any injury or damage suffered by Plaintiffs, if any, was due to or caused by or occasioned by the intervening actions or omissions of a third party or parties for whom Santee Cooper and the Director Defendants are not responsible and therefore, Plaintiffs' claims should be barred or reduced accordingly.

FOR A THIRTIETH DEFENSE

142. Santee Cooper and the Director Defendants would show that any injury or damage suffered by Plaintiffs, if any, was due to or caused by unforeseen intervening or superseding events for which Santee Cooper and the Director Defendants are not responsible and therefore, Plaintiffs' claims should be barred or reduced accordingly.

FOR A THIRTY-FIRST DEFENSE

143. Plaintiffs' claim for unjust enrichment is barred because Plaintiffs have not conferred any benefit upon Santee Cooper or the Director Defendants and neither Santee Cooper nor the Director Defendants have retained any such benefit under circumstances which would make such retention unjust.

FOR A THIRTY-SECOND DEFENSE

144. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Plaintiffs have no property or possessory right to funds from Toshiba or any other party.

FOR A THIRTY-THIRD DEFENSE

145. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Plaintiffs have no property interest in payments made for electricity.

FOR A THIRTY-FOURTH DEFENSE

146. Some or all of the claims asserted in Plaintiffs' Complaint are barred because Plaintiffs have no property interest in money and the charging and collection of rates for electricity is not a taking.

FOR A THIRTY-FIFTH DEFENSE

147. Santee Cooper asserts the Constitution of the State of South Carolina and 1984 Act No. 100 § 3, which provided for the adoption of the South Carolina Rules of Civil

Procedure, as a bar to the trial of this case as a class action, insofar as the Rules of Civil Procedure affect matters of procedure only, and the named plaintiffs are attempting to use the procedural rules to enlarge the substantive rights of themselves and the members of the putative class, to alter the substantive elements of proof required under the common law for persons within the putative class, and to shift the burden of proof impermissibly to Santee Cooper and the Director Defendants. The named plaintiffs' attempted use of Rule 23 thus violates the Constitution and 1984 Act No. 100 § 3, and for that reason Plaintiffs' Complaint must be dismissed or the class allegations must be stricken from it.

FOR A THIRTY-SIXTH DEFENSE

148. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the doctrine of waiver.

FOR A THIRTY-SEVENTH DEFENSE

149. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the doctrine of laches.

FOR A THIRTY-EIGHTH DEFENSE

150. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the doctrine of estoppel.

FOR A THIRTY-NINTH DEFENSE

151. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the doctrine of ratification.

FOR A FORTIETH DEFENSE

152. Some or all of the claims asserted in Plaintiffs' Complaint are barred by the doctrine of payment and release.

FOR A FORTY-FIRST DEFENSE

153. Plaintiffs' claim for attorneys' fees is unsupported by contract or statute, and, therefore, should be stricken from the Complaint.

FOR A FORTY-SECOND DEFENSE

154. The named plaintiffs and putative class are not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- (a) The South Carolina judiciary's ability to correct a punitive damages award at the appellate level is inconsistent with due process guarantees;
- (b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- (c) To the extent an award of punitive damages is excessive, such award violates due process guarantees;
- (d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantee;
- (e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and
- (f) The claim for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the Defendants.

FOR A FORTY-THIRD DEFENSE

155. Santee Cooper and the Director Defendants assert venue is improper in Hampton County and the claims should be transferred to the proper venue.

FOR A FORTY-FOURTH DEFENSE

156. In the Complaint, Plaintiffs assert that in January 2014, Santee Cooper sold SCE&G a 5% ownership interest in the Project, increasing SCE&G's ownership interest to 60% and reducing Santee Cooper's ownership interest to 40%. The Complaint further alleges that Santee Cooper's customers continued to bear 100% of the costs associated with the Project based on Santee Cooper having a 45% ownership interest rather than a reduced 40% ownership interest. In the case of *Lightsey, et al. v. SCE&G, et al.*, (Case No. 2017-CP-25-00335, Hampton County), the *Lightsey* Plaintiff Class, represented by the same counsel as Plaintiffs in this case, settled their claims against SCE&G and SCANA which were based on SCE&G/SCANA's ownership interest in the Project. The Plaintiffs in this action, by asserting that a 5% ownership interest sale occurred between Santee Cooper and SCE&G in January 2014, are alleging that Santee Cooper based the charges to its customers on a 45% ownership interest when such charges should have been based on a 40% ownership interest. As Plaintiffs in this action allege that 5% ownership interest was transferred to SCE&G, the alleged act of Santee Cooper continuing to charge its customers based on 45% ownership would have operated to the financial benefit of SCE&G and its customers (who comprise the *Lightsey* Class). If the 5% ownership interest transfer did take place, as alleged by Plaintiffs, then the funds the Plaintiffs seek are part of the *Lightsey* Class Settlement fund, and Santee Cooper and the Director Defendants are entitled to a set-off or equitable accounting/adjustment.

FOR A FORTY-FIFTH DEFENSE

157. Santee Cooper and the Director Defendants incorporate herein by reference the cross-claims and counterclaims stated below as a further to defense to Plaintiffs' claims.

158. Santee Cooper and the Director Defendants reserve the right to amend this Answer to assert further defenses and/or counterclaims as discovery proceeds.

WHEREFORE, having fully answered the Fifth Amended Complaint of the Plaintiffs, Santee Cooper and the Director Defendants pray that the Fifth Amended Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

**FOR A FORTY-SIXTH DEFENSE AND BY WAY OF CROSS-CLAIMS AGAINST
SOUTH CAROLINA ELECTRIC & GAS**

1. Now comes Santee Cooper, pursuant to Rule 13(g) of the South Carolina Rules of Civil Procedure, and by way of this cross-claim against South Carolina Electric & Gas (“SCE&G”), states the following:

PARTIES

2. Santee Cooper is a body corporate and politic, created by Act of the General Assembly, S.C. Code Ann. § 58-31-10, and is a South Carolina state agency.

3. SCE&G is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

4. This Court has subject matter and personal jurisdiction.

5. Santee Cooper does not waive venue and objects to venue in this Court. The claims should be transferred to the proper venue.

FACTUAL ALLEGATIONS

I. The Claims Against Santee Cooper

6. Plaintiffs’ claims against Santee Cooper are premised on alleged misconduct by SCE&G, SCANA, SCANA Services, and their executives, including breaches of duties running from SCE&G to Santee Cooper and to Santee Cooper’s customers related to the construction of the Project.

7. Allegations about SCE&G's wrongdoing and unjust enrichment are woven into the fabric of Plaintiffs' claims against Santee Cooper, with allegations of damage to Santee Cooper's customers resulting from the acts and omissions of SCE&G, SCANA, SCANA Services, and their executives, and their breaches of duties, including the duty of good faith and fair dealing.

8. Plaintiffs seek disgorgement of benefits realized by SCE&G, SCANA, SCANA Services, and their executives, as a consequence of their alleged misconduct.

II. SCE&G's Mismanagement of the Project and Delay in Implementing Santee Cooper's Proposals to Address Project-related Issues

9. Santee Cooper sought to keep the Project on track and within budget and made multiple proposals to SCE&G to improve Project oversight and performance and protect the Project from a potential Westinghouse Electric Company, LLC ("Westinghouse") bankruptcy. SCE&G, which was responsible for managing the Project, ignored Santee Cooper's proposals.

10. SCE&G willfully and intentionally did not confront Westinghouse or the Consortium about their failure to manage the project in ways that would be effective.

11. SCE&G's "hands-off" approach to managing the Project delayed implementation of corrective measures and contributed to the Project's failure. (Sept. 24, 2018 Prefiled Direct Testimony of Anthony James, at 17:17-20).

12. In September 2014, Santee Cooper emailed SCANA's & SCE&G's CEO, Kevin Marsh, to inform him of Santee Cooper's desire to hire or engage an additional resource with significant construction expertise to assist in evaluating the construction schedule and project costs. (ORS Ex. GCJ 2.17 p. 3).

13. In February 2015, Santee Cooper suggested that the Project Owners retain Bechtel Corporation to assess the Project and identify areas for Project improvement. (*Id.*).

14. Despite Santee Cooper's requests, SCE&G did not agree to the Bechtel assessment until several months after Santee Cooper's initial request. (*Id.*).

15. In August 2015, as a result of Santee Cooper's demands, SCE&G and Santee Cooper engaged Bechtel to perform an assessment of the Project to identify areas for improvement. (*Id.*).

16. In October and November 2015, after Bechtel completed its analysis, SCE&G resisted Bechtel's attempt to develop a final report and demanded alterations to the initial draft of Bechtel's final report. (*Id.* at 3–4).

17. In February 2016, Bechtel distributed its completed final report to SCANA, which distributed numbered copies of the report to Santee Cooper. (*Id.* at 4).

18. Based on the Bechtel assessment, Santee Cooper made five formal recommendations to SCE&G to improve Project performance:

- (a) Develop a Construction Milestone Payment Schedule;
- (b) Perform a Project evaluation and assessment;
- (c) Schedule quarterly meetings with Toshiba, Westinghouse, and Fluor;
- (d) Evaluate whether to exercise the Fixed Price Option; and
- (e) Retain professional oversight of the Engineering, Procurement, and

Construction ("EPC") Agreement. (*Id.*).

19. SCE&G agreed that it and Santee Cooper should study the Bechtel report and agree on actionable recommendations. (*Id.*).

20. SCE&G agreed to add EPC resources to its team to increase oversight of the Project. (*Id.*).

21. In April 2016, Santee Cooper submitted additional feedback to SCE&G regarding the Bechtel assessment. Santee Cooper again recommended the addition of EPC expert resources to assist SCE&G and improve Project management. (*Id.* at 5).

22. SCE&G agreed in principle to the recommendations. However, throughout 2016, SCE&G did not add EPC oversight resources to assist with Project management despite Santee Cooper's repeated requests that it do so. (*Id.* at 6–7).

23. Moreover, ORS representatives testified that when they asked SCE&G about the Bechtel Report, SCE&G indicated that it was of no moment. (Merits Hearing, Testimony of Gary Jones, 443:23–445:20, Nov. 2, 2018).

24. At a South Carolina Public Service Commission (“PSC”) hearing on the merits of SCANA's proposed merger with Dominion Energy, Inc., SCANA's current CEO, Jimmy Addison, testified that he wished SCE&G had disclosed the Bechtel assessment to ORS. (Merits Hearing, Testimony of Jimmy Addison, 1511–12, Nov. 8, 2018).

25. Addison also affirmed at the PSC hearing that he does not blame Santee Cooper for the fact that the Project failed. (Merits Hearing, Testimony of Jimmy Addison, 1548:12-17, Nov. 8, 2018; Merits Hearing, Testimony of Jimmy Addison, 1596:25–1597:8, Nov. 9, 2018).

26. In 2015, Toshiba's senior executives and Board of Directors resigned after Toshiba announced a major accounting scandal. (ORS Ex. GCJ – 2.17 at 8).

27. In March 2016, Santee Cooper requested that bankruptcy counsel be retained for the Project as a proactive measure given Toshiba's financial condition and the possibility that SCE&G and Santee Cooper would exercise the Fixed Price Option. (*Id.* at 1, 8).

28. Santee Cooper repeatedly contacted SCE&G employees over the next several months and emphasized the need to retain Project bankruptcy counsel to evaluate the risk of a bankruptcy by Toshiba and/or Westinghouse, but SCE&G did not follow Santee Cooper's recommendation. (*Id.* at 8–9).

29. In June 2016, SCE&G employees notified Santee Cooper that George Wenick was “looking for candidates” to serve as Project bankruptcy counsel. (*Id.* at 10).

30. In October 2016, after SCE&G and George Wenick failed to secure Project bankruptcy counsel, Santee Cooper notified SCE&G that it had sought and retained bankruptcy counsel itself. (*Id.* at 11).

31. Former SCE&G Chief Operating Officer and President of Generation and Transmission Steve Byrne's testimony about communications from Santee Cooper establishes that he, for himself and SCE&G, discounted communications from Santee Cooper's CEO, considering them to be in the nature of “negotiations,” as opposed to good faith requests from a joint owner. (Merits Hearing, Testimony of Stephen Byrne, 4107–08, Nov. 21, 2018; *see also id.* at 4082-159, 4082-166.)

32. Similarly dismissive was SCE&G's CEO Kevin Marsh, who labeled Santee Cooper's CEO, Lonnie Carter, to be a “glass-half-[empty] kind of guy. He was always looking on the negative side of most things” (Deposition of Kevin Marsh, 130:10-21 (Oct. 29, 2018).)

33. SCANA's former vice president of nuclear finance administration, Carlette Walker, testified that SCANA executives lied to and deceived the Public Service Commission to manipulate SCANA's stock price and maximize the executives' short- and long-term bonuses. (Merits Hearing, Testimony of Carlette Walker, 3844: 10-25, 3847:6-12, Nov. 20, 2018).

**FOR A FIRST CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Breach of Contract Accompanied By Fraudulent Act)**

34. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

35. On October 20, 2011, SCE&G and Santee Cooper entered into a binding contract, the Design and Construction Agreement (“DCA”), in connection with the Project. The terms of the DCA are incorporated herein by reference.

36. Santee Cooper and SCE&G agreed that, under the DCA, SCE&G shall act as Santee Cooper’s agent with respect to “all aspects of the acquisition, design, engineering, licensing and construction of the Project, including the negotiation, execution and performance of the obligations and enforcement of the rights of the Parties under the EPC Agreement.”

37. Pursuant to the DCA, SCE&G “shall have the lead role in planning and development of the Project[,]” including, without limitation, the authorization to:

- (a) Manage all aspects of the day-to-day design and construction of the Project, including, but not limited to, scheduling, financial, engineering, operational and contractual aspects of the Project;
- (b) Annually develop the Project Budget and a projection to complete the Project;
- (c) Monitor the Project Budget and annual expenditures to identify any need for the use of unallocated funds;
- (d) Implement any project site (“Site”) access control and security requirements under applicable Laws or as SCE&G reasonably determines;
- (e) Lead in the negotiations with vendors and other third parties for Project-related agreements and amendments; and

(f) Negotiate with vendors and other third parties for Project-related agreements and amendments and execute such agreements and amendments on behalf of Santee Cooper.

38. To the extent that Plaintiffs' allegations in the Fifth Amended Complaint, Central Electric Cooperative, Inc.'s ("Central") allegations in its cross-claims, or Palmetto Electric Cooperative, Inc.'s ("Palmetto") allegations in its cross-claims can or will be proven true, SCE&G has breached the foregoing and other terms of the DCA.

39. To the extent that Plaintiffs' allegations in the Fifth Amended Complaint, Central's allegations in its cross-claims, or Palmetto's allegations in its cross-claims can or will be proven true, SCE&G's breach of the DCA was accomplished with fraudulent intent.

40. To the extent that Plaintiffs' allegations in the Fifth Amended Complaint, Central's allegations in its cross-claims, or Palmetto's allegations in its cross-claims can or will be proven true, SCE&G's breach of the DCA was accomplished by various fraudulent acts by SCE&G, including, without limitation, SCE&G's dishonesty, bad faith, unfair dealing, and the unlawful appropriation of Santee Cooper's money by design.

41. As the direct and proximate result of SCE&G's alleged breaches of the DCA and the duties owed to Santee Cooper, Santee Cooper has suffered and will continue to suffer damages including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiffs', Central's, and Palmetto's causes of action, and being liable for and paying damages to Plaintiffs, Central, and/or Palmetto.

42. Santee Cooper is entitled to damages arising from SCE&G's breach of the DCA accompanied by a fraudulent act in an amount to be determined by the trier of fact.

**FOR A SECOND CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Gross Negligence)**

43. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

44. SCE&G owed a duty of care to Santee Cooper as a co-owner of the Project and Santee Cooper's agent.

45. SCE&G breached that duty by failing to exercise even slight care and committing the intentional, wrongful acts alleged in Plaintiffs' Fifth Amended Complaint.

46. As a result of SCE&G's intentional misconduct and failure to exercise even slight care, Santee Cooper has suffered and will continue to suffer damages including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiffs', Central's, and Palmetto's causes of action, and being liable for and paying damages to Plaintiffs, Central, and/or Palmetto.

47. SCE&G's failure to exercise slight care and intentional misconduct is the proximate cause of Santee Cooper's damages.

48. Santee Cooper is entitled to damages arising from SCE&G's gross negligence.

**FOR A THIRD CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Breach of Fiduciary Duties)**

49. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

50. At all times from October 31, 2006, until the present, SCE&G has served as Santee Cooper's agent related to the Project under the terms of the DCA and Limited Agency Agreements ("LAA").

51. As Santee Cooper's agent, SCE&G owed fiduciary duties to Santee Cooper, including the duty of care, duty of loyalty, and duty of full disclosure. (*See Peoples Fed. Savs. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145, 425 S.E.2d 764, 773 (Ct. App. 1992)).

52. The duty of care required SCE&G to act with standard care and skill for the kind of work it was employed to perform. (*Karby v. Standard Prod. Co.*, C.A. No. 3:90-2918-17, 1992 WL 333931, at *8 (D.S.C. June 22, 1992) (quoting Restatement (Second) of Agency § 379(1))).

53. The duty of loyalty required SCE&G to act in Santee Cooper's interests and prohibited SCE&G from or engaging in self-dealing. (*Fender v. Fender*, 285 S.C. 260, 262, 329 S.E.2d 430, 431 (1985)).

54. The duty of full disclosure required SCE&G to make full disclosure of all material facts relevant to its agency. (*Darby v. Furman Co.*, 334 S.C. 343, 347, 513 S.E.2d 848, 850 (1999)).

55. To the extent that Plaintiffs' allegations in the Fifth Amended Complaint, Central's allegations in its cross-claims, or Palmetto's allegations in its cross-claims can or will be proven true, SCE&G breached its fiduciary duties to Santee Cooper and failed to act in good faith.

56. As a result of SCE&G's breach of its fiduciary duties, Santee Cooper has suffered and will continue to suffer damages including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiffs', Central's, and Palmetto's causes of action, and being liable for and paying damages to Plaintiffs, Central, and/or Palmetto.

57. Santee Cooper is entitled to damages arising from SCE&G's breach of its fiduciary duties.

**FOR A FOURTH CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Breach of contract accompanied by bad faith)**

58. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

59. SCE&G had contractual duties to maintain and preserve property at the Project under the DCA.

60. In order to gain a \$2 billion tax advantage for itself, SCE&G completely abandoned the project, including its duty and obligation to maintain and preserve property and equipment at the project. SCE&G's actions in failing to maintain and preserve the property and equipment at the Project are inconsistent with prudent utility practice.

61. SCE&G's unilateral actions breached its contractual duties to Santee Cooper.

62. SCE&G's breach of its contractual duties caused damage to Santee Cooper, including but not limited to additional costs to try to maintain the property and equipment and also in damage to the equipment which was thereby diminished in value.

63. SCE&G increased the damage by delay and refusal to permit Santee Cooper to take title to the property and equipment in order to mitigate damage.

64. SCE&G is liable to Santee Cooper for these failures.

**FOR A FIFTH CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Waste)**

65. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

66. SCE&G and Santee Cooper own the Site as tenants in common.

67. As a co-tenant in a tenancy-in-common, SCE&G is obligated to preserve the value of the property and refrain from taking any action that damages the value of the property.

68. SCE&G abandoned the Site for the purpose of obtaining federal tax credits for itself. SCE&G is no longer maintaining the Site or the property stored at the Site. (*See, e.g.*, Merits Hearing, Testimony of Jimmy Addison, 1701-04, Nov. 9, 2018).

69. SCE&G's failure to preserve the property constitutes waste.

70. Santee Cooper has incurred costs and expenses to maintain and preserve the value of the property located at the Site and to wind down the Project due to SCE&G's failure to perform its obligations. (S/C PowerPoint Presentation to PSA Eval. and Recommendation Committee, Slide 66, Aug. 22, 2018).

71. SCE&G has not contributed to Santee Cooper's efforts to preserve and maintain the property, and Santee Cooper has been forced to bear 100% of such costs. (*Id.*).

72. Santee Cooper is entitled to damages arising from SCE&G's waste and reimbursement for the costs it has incurred to maintain and preserve the property.

**FOR A SIXTH CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Contractual Indemnification)**

73. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

74. Under the DCA, SCE&G agreed to indemnify, defend, and hold harmless Santee Cooper against all claims, liabilities, obligations, judgments, liens, injunctions, charges, orders, decrees, rulings, damages, dues, assessments, taxes, losses, fines, penalties, damages, expenses, fees, costs and amounts paid in settlement, including reasonable attorneys' fees, expert witness fees and disbursements in connection with investigating, defending or settling any action

or threatened action, arising out of any claim, complaint, demand, cause of action, action, suit or other proceeding asserted or initiated or otherwise existing in respect of any matter arising out of the Indemnifying Party's gross negligence, willful misconduct or bad faith.

75. Under a series of LAAs, SCE&G agreed to indemnify, defend, and hold harmless Santee Cooper, its officers, directors, and employees against and in respect of all claims, liabilities, obligations, judgments, liens, injunctions, charges, orders, decrees, rulings, damages, dues, assessments, taxes, losses, fines, penalties, damages, expenses, fees, costs and amounts paid in settlement (including reasonable attorneys' fees, expert witness fees and disbursements in connection with investigating, defending or settling any action or threatened action), arising out of any claim, complaint, demand, cause of action, action, suit or other proceeding asserted or initiated or otherwise existing in respect of any matter arising out of SCE&G's activities undertaken on behalf of Santee Cooper. To the extent that Plaintiffs', Central's, and Palmetto's claims against Santee Cooper arise out of activities undertaken by SCE&G on behalf of Santee Cooper, Santee Cooper is entitled to indemnification under the applicable LAAs.

76. To the extent that Plaintiffs' allegations in the Fifth Amended Complaint, Central's allegations in its cross-claims, or Palmetto's allegations in its cross-claims can or will be proven true, SCE&G will have committed gross negligence, willful misconduct, or bad faith.

77. As the direct and proximate result of SCE&G's alleged gross negligence, willful misconduct, or bad faith, Santee Cooper has suffered and will continue to suffer damages including, but not limited to, incurring and continuing to incur attorney's fees, court costs, and other costs in connection with defending against Plaintiffs', Central's, and Palmetto's causes of action, and being liable for and paying damages to Plaintiffs, Central, and/or Palmetto.

78. Pursuant to the DCA and LAAs, Santee Cooper is entitled to complete contractual indemnification from SCE&G for any judgment or damages, civil penalties, settlement, or other relief it is order to pay by the Court or resulting from Plaintiffs' claims or Central's or Palmetto's cross-claims.

79. Santee Cooper is also entitled to recover from SCE&G all of the attorneys' fees and costs it incurred and continues to incur during this lawsuit.

**FOR A SEVENTH CROSS-CLAIM AGAINST SOUTH CAROLINA ELECTRIC & GAS
(Equitable Indemnification)**

80. The foregoing allegations are incorporated by reference as if repeated verbatim herein.

81. As a result of Plaintiffs' filing of the Fifth Amended Complaint, Central's filing of cross-claims, and Palmetto's filing of cross-claims, Santee Cooper has been placed in a situation where it is necessary to incur litigation expenses to protect its interest.

82. To the extent that Plaintiffs' allegations in the Fifth Amended Complaint, Central's allegations in its cross-claims, or Palmetto's allegations in its cross-claims can or will be proven true, Santee Cooper is held liable for damages, or Santee Cooper enters into a settlement agreement with Plaintiffs, Central, or Palmetto, then Santee Cooper will have suffered damages as a result of SCE&G's wrongful conduct.

83. No negligence by Santee Cooper contributed to Santee Cooper's injury, which is the fault of SCE&G.

84. Santee Cooper did not cause or join in and is not responsible for the acts and/or omissions of SCE&G or any of the damages alleged in the Fifth Amended Complaint, Central's cross-claims, or Palmetto's cross-claims.

85. SCE&G's obligation to Santee Cooper for any loss or damage that Santee Cooper may incur in this action resulting from any wrongful acts committed by SCE&G arises by operation of law and the relationship between the parties as a matter of equity between SCE&G and Santee Cooper.

86. It would be inequitable for Santee Cooper to be held liable to Plaintiffs, Central, and/or Palmetto based on SCE&G's conduct.

87. Santee Cooper is entitled to complete equitable indemnification from SCE&G for any damages, civil penalties, or other relief it is ordered to pay by the Court or resulting from Plaintiffs' claims or Central's or Palmetto's cross-claims.

88. Santee Cooper is also entitled to recover from SCE&G all of the attorneys' fees and costs it incurred and continues to incur during this lawsuit.

89. Santee Cooper respectfully requests the following relief:

(a) That Santee Cooper be awarded damages, its costs and attorneys' fees, and further relief for SCE&G's breach of the DCA accompanied by a fraudulent act, gross negligence, breach of its fiduciary duties, breach of contract, and waste; and

(b) That SCE&G indemnify Santee Cooper for any judgment entered against Santee Cooper for the allegations in the Fifth Amended Complaint, Central's cross-claims, or Palmetto's cross claims, and that SCE&G indemnify Santee Cooper for any costs and attorneys' fees it incurs in defending this action; and

(c) Such other relief as the Court deems just and proper.

**FOR A FORTY-SEVENTH DEFENSE AND BY WAY OF COUNTER-CLAIM
AGAINST PLAINTIFFS AND CROSS-CLAIM AGAINST CENTRAL ELECTRIC
COOPERATIVE, INC. AND PALMETTO ELECTRIC COOPERATIVE, INC.**

1. Now comes Santee Cooper, pursuant to Rules 13(a), 13(g), and 14(a) of the South Carolina Rules of Civil Procedure, and by way of this counter-claim against the Plaintiff class, cross-claim against Central Electric Cooperative, Inc. (“Central”) and Palmetto Electric Cooperative., Inc. (“Palmetto”), and third-party complaint against The Electric Cooperatives of South Carolina, Inc. (“ECSC”), states the following:

INTRODUCTION

2. Santee Cooper asserts this claim because the continued financial integrity of a state agency owned by and for the benefit of the people of South Carolina, and the statutes that create and govern Santee Cooper, S.C. Code Ann. §§ 58-31-10 et seq. (“the Enabling Act”), will be violated if Santee Cooper is barred from setting and recovering rates from ratepayers which are sufficient to provide revenues necessary: (i) to pay for construction and other costs associated with the V.C. Summer Nuclear Site, Units 2 and 3 (“the Project”), (ii) to make payments of principal and interest on debt associated with the Project, and (iii) to satisfy other agreements with and obligations to debtholders.

3. Santee Cooper asserts this claim because the General Assembly mandates that Santee Cooper must recover revenues sufficient to provide for its costs and expenses, the conservation, maintenance, and operation of its facilities, the payment of principal and interest on bonds and other debt, and satisfaction of all obligations to debtholders—including the construction of the Project and principal and interest on debt instruments related thereto from its ratepayers. Claims by ratepayers, Central (Santee Cooper’s largest customer) and ECSC challenge Santee

Cooper's ability to fulfill this statutory mandate and the legislative purposes embodied by its enabling legislation as amended from time to time.

4. The determination of the issue presented by this claim depends on the interpretation of certain portions of the Enabling Act, including the sections:

(a) establishing Santee Cooper as fiscally self-sufficient and independent of the State of South Carolina and requiring that all of its projects must be financed as self-liquidating projects, S.C. Code Ann. § 58-31-30(A)(21);

(b) authorizing Santee Cooper to set rates at a level at least sufficient to cover all expenses of Santee Cooper, the conservation, maintenance, and operation of its facilities, and the payment of principal and interest on bonds and other forms of debt, and to fulfill its obligations to the holders of such debt, S.C. Code Ann. § 58-31-30(A)(13);

(c) authorizing Santee Cooper to issue revenue bonds and other debt instruments and to secure the payment of the same with, among other things, a pledge or lien on its revenues, S.C. Code Ann. § 58-31-30(A)(14);

(d) authorizing Santee Cooper to make covenants and other agreements with the debtholders, and to include such covenants, obligations, and agreements in resolutions authorizing issuance of debt and in the debt instruments themselves, S.C. Code Ann. § 58-31-30(A);

(e) providing extensive remedies to debtholders, including the power to have a receiver appointed to conduct the business of Santee Cooper and set and charge rates at least sufficient to pay Santee Cooper's costs and

expenses, the conservation, maintenance, and operation of its facilities, the payment of principal and interest on debt, and to fulfill obligations to debtholders, S.C. Code Ann. § 58-31-40;

(f) making a covenant between the State of South Carolina and any person or entity who invests in bonds issued by Santee Cooper or loans it funds, for the protection of such persons, that the State would do nothing to impair Santee Cooper's power to set and collect rates at least sufficient to pay costs and expenses, the conservation, maintenance, and operation of its facilities, and the payment of principal and interest on debt, and to fulfill obligations to debtholders, S.C. Code Ann. § 58-31-360; and

(g) making a covenant between the State of South Carolina and any person or entity who invests in bonds issued by Santee Cooper or loans it funds, for the protection of such persons, that the State would not alter or limit the rights vested in Santee Cooper until the debt instruments are fully met and discharged without making adequate provisions at law to protect those debtholders, S.C. Code Ann. § 58-31-30(21).

PARTIES AND JURISDICTION

5. Santee Cooper is a body corporate and politic, created by Act of the General Assembly, S.C. Code Ann. § 58-31-10, and is a South Carolina state agency.

6. Upon information and belief, Plaintiff Jessica Cook is a resident of Hampton County, South Carolina.

7. Upon information and belief, Plaintiff Corrin F. Bowers & Son is a resident of Hampton County, South Carolina.

8. Upon information and belief, Plaintiff Cyril B. Rush, Jr. is a resident of Richland County, South Carolina.

9. Upon information and belief, Plaintiff Bobby Bostick is a resident of Charleston County, South Carolina.

10. Upon information and belief, Plaintiff Kyle Cook is a resident of Aiken County, South Carolina.

11. Upon information and belief, Plaintiff Chris Kolbe is a resident of Horry County, South Carolina.

12. Upon information and belief, Plaintiff Ruth Ann Keffer is a citizen of Horry County, South Carolina.

13. Central is an eleemosynary corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

14. ECSC a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

15. Palmetto is an eleemosynary corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

16. This Court has subject matter and personal jurisdiction over these claims pursuant to the Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq., and its equitable powers.

17. Santee Cooper does not waive venue and objects to venue in this Court. The claims should be transferred to the proper venue.

FACTS

18. On July 31, 2017, Santee Cooper's Board of Directors voted to suspend the construction of the Project.

19. Prior to that date, Santee Cooper had incurred costs and expenses relating to the construction of the Project, and in connection with the Project and its other endeavors, Santee Cooper had incurred debt, as represented by bonds and other debt instruments issued by Santee Cooper from time to time.

20. On April 26, 1999, pursuant to the authority granted by the Enabling Act, Santee Cooper's Board of Directors adopted a Master Revenue Obligation Resolution.

21. The Master Revenue Obligation Resolution established the general terms and conditions upon which its revenue obligations may be issued for corporate purposes of Santee Cooper.

22. Santee Cooper financed approximately \$4.2 billion for construction from the proceeds of debt, including bonds, issued from 2008 through 2016.

23. The debt instruments were issued pursuant to the authority granted by the Enabling Act.

24. Among the agreements made with debtholders is Santee Cooper's covenant to set and collect rates and charges at least sufficient to raise revenues to make payments of principal and interest on the debt. Santee Cooper further agreed that if for any reason it failed to set and collect rates sufficient to make these payments, then whether Santee Cooper had defaulted on the bonds or not, the debtholders could resort to the courts of South Carolina for an order requiring Santee Cooper to set rates at a sufficient level.

25. The lawsuits and cross-claims filed by Plaintiffs, Central, and Palmetto seek to require this Court to alter, limit, or restrict Santee Cooper's ability to set rates sufficient to pay

the costs and expenses of the Project, the conservation, maintenance, and operation of its facilities, payment of principal and interest on bonds and other forms of debt associated with the Project, and fulfill its obligations to and agreements with debtholders.

**FOR A FIRST COUNTER-CLAIM AGAINST PLAINTIFFS AND FIRST CROSS-CLAIM AGAINST CENTRAL AND PALMETTO
(Declaratory Judgment)**

26. Each of the above allegations is incorporated by reference into this cause of action.

27. Santee Cooper is a body corporate and politic, created by Act of the General Assembly. S.C. Code Ann. § 58-31-10.

28. Santee Cooper is a state agency.

29. Santee Cooper does not have shareholders.

30. Santee Cooper receives no state funds and operates entirely on the revenues from its operation. S.C. Code Ann. § 58-31-140.

31. Any and all projects undertaken by Santee Cooper must be financed as self-liquidating projects. S.C. Code Ann. § 58-31-30(A)(21).

32. Santee Cooper is authorized to set, maintain, and collect rates and charges for the use of its facilities, for services it renders, or for any commodities it furnishes. S.C. Code Ann. § 58-31-30(A)(13).

33. The rates and charges set, maintained, and collected by Santee Cooper must be “at least sufficient [A] to provide for [i] payment of all expenses of the Public Service Authority, [ii] the conservation, maintenance, and operation of its facilities and properties, [iii] the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligation, and

[B] to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, or other evidences of indebtedness or obligation.” *Id.*

34. These rates are set by Santee Cooper through its Board of Directors. S.C. Code Ann. § 58-31-60.

35. Santee Cooper’s Directors are required to act in a manner they reasonably believe to be in the best interests of Santee Cooper, which includes, among other things, preserving Santee Cooper’s financial integrity, its ongoing operation of delivering electricity to its customers, and economic development and job attraction and retention. S.C. Code Ann. § 58-31-55(A).

36. Santee Cooper is authorized to borrow money, make and issue negotiable notes, bonds, and other forms of debt. S.C. Code Ann. § 58-31-30(A)(14).

37. Santee Cooper is authorized to secure the payment of obligations on notes, bonds, and other forms of debt by mortgage, lien, pledge, or deed of trust on any of its property, contracts, or revenues. S.C. Code Ann. § 58-31-30(A)(19).

38. Santee Cooper is authorized to make such agreements with purchasers or holders of notes, bonds, and other forms of debt as it deems advisable and to provide for the security of these notes, bonds, and other forms of debt and the rights of the holders of this debt. S.C. Code Ann. § 58-31-30(A).

39. Santee Cooper’s resolutions authorizing notes, bonds, and other forms of debt may include provisions regarding rates and charges, reserves, rights of redemption, limitations on issuance of additional bonds, mortgages or deeds of trust, and any other or additional agreements with the holders of the notes, bonds, and other debts. *Id.*

40. For the protection of persons holding notes and other forms of debt and other obligations of Santee Cooper, the State of South Carolina itself entered into two covenants with such persons.

41. In the first statutory covenant, the State promised that it will not alter or limit the rights vested in Santee Cooper until the debt and other obligations issued by Santee Cooper for the construction of any project are fully met and discharged, unless adequate provisions are made by law for the protection of such debtholders. S.C. Code Ann. § 58-31-30(A)(21).

42. In the second statutory covenant, the State promised that it will not alter, limit, or restrict Santee Cooper's power to fix and collect rates and charges at least sufficient (a) to provide for (i) all expenses of Santee Cooper, (ii) the conservation, maintenance, and operation of its facilities, (iii) the principal and interest on its debt, and (b) to fulfill other agreements made with the purchasers or holders of notes, bonds, and other forms of debt. S.C. Code Ann. § 58-31-360.

43. No amendment or repeal of the Enabling Act shall operate to impair the obligation of any contract made by Santee Cooper under any power conferred by the Enabling Act. S.C. Code Ann. § 58-31-150; accord S.C. Const. art. I, § 4 ("No . . . law impairing the obligation of contracts . . . shall be passed . . ."); U.S. Const. art. I, § 10 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .").

44. Santee Cooper's Enabling Act provides rights and protections to debtholders that are not provided to customers.

45. The Enabling Act, as originally enacted and amended over the course of decades, expresses the legislative intent that Santee Cooper must ensure that its projects are self-liquidating by setting rates and charges for the services it provides at a level at least sufficient to

pay all of its costs and expenses, the conservation, maintenance, and operation of its facilities, payments of principal and interest on its debt, and to satisfy all obligations to bondholders and others holding notes and other forms of debt. Santee Cooper is required to raise revenues to satisfy these obligations from rates and charges to its ratepayers. If the State of South Carolina were to impair or restrict Santee Cooper's ability to do so, it would violate the covenant the State made with debtholders as stated in the Enabling Act and render the State of South Carolina liable to Santee Cooper's debtholders.

46. Accordingly, Santee Cooper is entitled under the South Carolina Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq., to a judgment of this Court declaring the various rights, liabilities and relations of the parties hereto.

47. Pursuant to the powers granted this Court under the South Carolina Declaratory Judgment Act, Santee Cooper respectfully requests this Court enter a declaratory order:

(a) Confirming the clearly expressed legislative intent and declaring that pursuant to the Enabling Act, Santee Cooper must raise revenues from its customers through rates and charges at least sufficient to pay all of its costs and expenses, the conservation, maintenance, and operation of its facilities, payment of principal and interest on bonds and other indebtedness, and to fulfill all agreements with and obligations to debtholders and others—including those related to the Project; and

(b) Giving effect to this declaratory relief by enjoining any of the defendants or any other similarly situated person from resorting to the courts to alter, limit, or restrict Santee Cooper's ability to establish rates and

charges at least sufficient to pay all of its costs and expenses, the conservation, maintenance, and operation of its facilities, payment of principal and interest on bonds and other indebtedness, and to fulfill all agreements with and obligations to debtholders and others—including those related to the Project.

**FOR A SECOND CROSS-CLAIM AGAINST CENTRAL AND PALMETTO AND A
THIRD-PARTY CLAIM AGAINST ECSC**

1. Now comes Santee Cooper, pursuant to Rule 13(g) and Rule 14(a) of the South Carolina Rules of Civil Procedure, and by way of this cross-claim against Central and Palmetto and this Third-Party claim against ECSC, states the following:

NATURE OF THE CROSS-CLAIM

2. Santee Cooper seeks a declaration that reaffirming that the Project is a “shared resource” under the binding terms of the Coordination Agreement between Santee Cooper and Central, for which Central is required to pay its share of costs and expenses—including debt service—in accordance with the cost of service methodology.

PARTIES AND JURISDICTION

3. Santee Cooper is a body corporate and politic, created by Act of the General Assembly, S.C. Code Ann. § 58-31-10, and is a South Carolina state agency.

4. Central is an eleemosynary corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

5. ECSC is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

6. Palmetto is an eleemosynary corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina.

7. ECSC consists of member electric cooperatives organized in the State of South Carolina. ECSC serves as the legal and regulatory representative of its member electric cooperatives. ECSC is the state-wide service and trade association for electric cooperatives in the state. ECSC's members include 19 consumer-owned electric cooperatives and Central. ECSC's principal place of business and mailing address is 808 Knox Abbott Drive, Cayce, South Carolina.

8. ECSC asserted the allegations in the preceding paragraph in support of its intervention in proceedings before the Public Service Commission, and ECSC is therefore estopped to deny them.

9. This Court has subject matter and personal jurisdiction over these claims pursuant to the Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq., and its equitable powers

10. Santee Cooper does not waive venue and objects to venue in this Court. The claims should be transferred to the proper venue.

FACTS

11. In Santee Cooper's Enabling Act, the General Assembly mandated that Santee Cooper fix, maintain, and collect charges to customers at rates that are at least sufficient to provide for payment of all of its expenses, the conservation, maintenance and operation of its facilities, the payment of principal and interest on its debt, and the fulfillment of its obligations to holders of bonds and other debt. S.C. Code Ann. § 58-31-30(A)(13).

12. The Enabling Act further authorizes Santee Cooper "to make contracts of every name and nature[.]" S.C. Code Ann. § 58-31-30(A)(17).

13. Central purchases power from Santee Cooper and provides wholesale electric service to South Carolina's electric cooperatives, who directly serve hundreds of thousands of retail customers.

14. Pursuant to its statutory authority and obligation, in 1980 Santee Cooper and Central entered into a Power Systems Coordination and Integration Agreement (the "Coordination Agreement"), effective December 31, 1980.

15. The Coordination Agreement governs the relationship between Santee Cooper and Central as to the purchase and sale of electrical power. Under the Coordination Agreement, Central purchases electrical power from Santee Cooper that it then sells to the Cooperatives, including Palmetto and other members of ECSC.

16. The Coordination Agreement has been amended several times over the years, and the operative agreement consists of: (1) the initial December 31, 1980 Coordination Agreement, (2) Amendments to the Coordination Agreement dated April 17, 1984, February 25, 1985, July 1, 1985, October 24, 1986, March 31, 1988, and May 20, 2013, and (3) related Memoranda of Understanding and Agreement dated January 11, 2001, September 28, 2009, March 18, 2010, July 23, 2013, and September 24, 2015.

17. Prior to the 2013 amendment, the Coordination Agreement was structured such that Santee Cooper planned, developed, and managed shared resources for the benefit of the Santee Cooper/Central system, and Central paid its allocable share of the cost of such development without significant control over the planning and development of new capacity.

18. The 2013 amendment to the Coordination Agreement³ extended the term to 2058, allowing for Santee Cooper to refinance and amortize debt over a longer period of time. This resulted in reduced periodic payments from Central.

19. Additionally, the 2013 amendment the Coordination Agreement increased Central's involvement in this planning, development, and management process for any shared resources proposed after the effective date of the agreement.

20. The 2013 amendment provided Central the right to opt-out of future, *Proposed* Shared Resources as part of the Resource Commitment Process, subject to the terms, conditions, and procedures specified in the Coordination Agreement. (*See* May 20, 2013 Amendment to Coordination Agreement, Art. IV.B.1.)

21. Central's opt-out rights, however, *did not* extend to existing Shared Resources or to Shared Resources then in development. Specifically, the 2013 Amendment provided that the "Resource Commitment Process *shall not* apply to any Resources that have been previously completed or are under construction as of the 2013 Amendment Effective Date, including V.C. Summer Nuclear Station Units 2 and 3." (*See* May 20, 2013 Amendment to Coordination Agreement at "Shared Resource"; App'x A, Art. IV; Art IV.B.1 (emphasis added).)

22. Central expressly agreed in the 2013 amendment that the Project was an existing Shared Resource, as the agreement defined Shared Resource as including V.C. Summer Nuclear Station Units 2 and 3. (*See* May 20, 2013 Amendment to Coordination Agreement at "Shared Resource".)

³ Attached as Exhibit B to Santee Cooper's Motion to Compel Central's Cross-Claims to Arbitration (filed May 30, 2018).

23. The 2013 amendment also included a provision requiring Central's approval of any Major Resource Modification regarding future Proposed Shared Resources. (*See* May 20, 2013 Amendment to Coordination Agreement, Art. IV.B.3.b.ii.) However, again, this term explicitly *excluded* V.C. Summer Nuclear Station Units 1, 2 and 3, providing that: "Cost Overruns and modifications to V.C. Summer Nuclear Station Units 1, 2 and 3 and Non-Shared Resources *shall not constitute Major Resource Modifications.*" (*Id.* (emphasis added).)

24. Finally, in the 2013 Amendment, Central also expressly agreed that Project costs and expenses would be included in the calculation of the cost of electrical service provided to Central by Santee Cooper. The Cost of Service components were set forth in detail in Appendix E of the 2013 amendment.

25. Specifically, Cost of Service was defined as "[Santee Cooper's] functionalized revenue requirements, used to determine certain rates and charges to Central." (*See* May 20, 2013 Amendment to Coordination Agreement at "Cost of Service," p. 4.) Appendix E explains that "revenue requirements" include seven components: (1) Operation and Maintenance Expenses, (2) Sums in Lieu of Taxes, (3) Debt Service and Lease Payments, (4) Working Capital Allowance, (5) Other Revenue Requirements and Adjustments, (6) Allowance for Capital Improvements, and (7) Other Income and Revenues. (*See* May 20, 2013 Amendment to Coordination Agreement App'x E, Sec. 1.B.3 (emphasis added).)

26. Appendix E explains that Cost of Debt Service "shall include all payments by [Santee Cooper] for interest and principal on debt and for leases." (*Id.* at Sec. 3.III.) Debt related to the Project falls within the Cost of Debt Service component because the 2013 amendment provides that:

Interest expense and principal paid on debt (collectively, "Debt Service") shall first be allocated to the plant classifications of

Production, Transmission, Distribution, and General in proportion to the average of beginning-of-year and end-of-year balances of net plant in service ***plus construction work in progress for such plant classifications***. Debt Service thus classified as Production, Transmission, and Distribution Plant-related shall be classified as ***Production Fixed Costs***, Transmission Costs, and Distribution Costs, respectively. The Debt Service classified as General Plant-related shall be functionalized in proportion to the functionalization of Administrative and General Expenses in the manner described hereinabove. Interest expense included in revenue requirements hereunder shall exclude so-called capitalized interest, which is interest paid from the proceeds of bonds or other borrowed funds.

(*Id.* at Sec. 3.III.A (emphasis added).)

27. Additionally, costs related to the Project are included in the Allowance for Capital Improvements component. Appendix E explains that:

[Santee Cooper] shall be entitled to include in the Cost of Service an allowance to provide funds ***for capital improvements to [Santee Cooper's] system and to provide debt service coverage***, which allowance (the "Allowance for Capital Improvements" or the "CIF Allowance") shall not in total exceed the greater of (i) eight and one-half percent (8.5%) of [Santee Cooper's] total gross revenue requirements (which is the aggregate total of all revenue requirements determined pursuant to parts I through V above, plus such allowance itself), or (ii) an amount that will result in an adequate debt service coverage, determined in accordance with part VI.B below.

(*Id.* at Sec. 3.VI.A (emphasis added).)

28. Finally, Appendix A also included costs related to the Project in Central's purchases under the Supplemental Power Sales provisions. Appendix A provides for two types of monthly charges under the Supplemental Purchases provision: (1) Monthly Supplemental Capacity Charges and (2) Monthly Supplemental Energy Charges. (*See* May 20, 2013 Amendment to Coordination Agreement App'x E, Art. IV.A.A.) The Capacity Charge is equal to Coincident Peak Demand multiplied by Capacity Cost Rate. (*Id.* at Art.IV.A.1.) Capacity Cost Rate equals the Production Demand Cost divided by Territory Peak Demands. (*Id.* at Art.IV.A.1.) Finally,

Production Demand Costs equal Supplemental Production Fixed Costs minus Energy Related Fixed Costs. (*Id.*) Appendix E defines the Energy-Related Fixed Costs as, *inter alia*, certain percentages of the Supplemental Production Fixed costs attributable to the Project. (*Id.*) Therefore, pursuant to Appendix A, Central was also obligated for costs related to the Project via the Supplemental Power Sales provisions.

29. In subsequent filings and testimony, Central has acknowledged that “Santee Cooper’s costs incurred to construct V.C. Summer Units 2 and 3 . . . compromise a portion of Central’s Share” under the Coordination Agreement. (*See* Central’s Mot. for Leave to Deposit Funds, Ex. 1 – Affidavit of John B. Brantley ¶ 8 (filed May 22, 2018; *see also* Testimony of John Tiencken, Hearing of House Utility Ratepayer Protection Committee at 20:09 (Feb. 8, 2018), <http://scstatehouse.gov/video/archives.php> (recognizing Central’s responsibility to contribute toward the recovery of the costs associated with the Project through the payment of rates and charges for energy and power).)

30. The construction of the Project was a joint project of SCE&G and Santee Cooper. Under a contract between Central and Santee Cooper, Central and the members of ECSC are responsible for approximately seventy percent of Santee Cooper’s capital costs. Thus, Santee Cooper’s share of the cost of the Project will be borne largely by Central and ECSC’s member cooperatives.

31. ECSC asserted the allegations in the preceding paragraph in support of its intervention in proceedings before the Public Service Commission, and ECSC is therefore estopped to deny them.

32. Upon information and belief, ECSC has encouraged its member cooperatives to work together for the purpose of renegotiating the Coordination Agreement and thus avoiding their responsibilities pursuant to the agreement.

33. Therefore, third-party defendant ECSC has an interest that would be affected by the declarations requested herein and is properly included as a third-party defendant in accordance with S.C. Code Ann. § 15-53-80.

**FOR A THIRD CROSS-CLAIM AGAINST CENTRAL AND PALMETTO AND A
SECOND THIRD-PARTY CLAIM AGAINST ECSC
(Declaratory Judgment)**

34. Each of the above allegations is incorporated by reference into this cause of action.

35. Santee Cooper is entitled under the South Carolina Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq., to a judgment of this Court declaring the various rights, liabilities and relations of the parties hereto with regard to the Coordination Agreement and the Project.

36. The 2013 amendment to the coordination agreement was extended to 2058, which permitted Santee Cooper to refinance and amortize debt over a longer period of time, resulting in a direct financial benefit to Central.

37. Under the terms of the Coordination Agreement, Central obtained the right to opt out of future generation projects, but had no right to opt out of the Project.

38. In exchange for these points, Central agreed to pay its share of the Project. Specifically, Central expressly agreed that Project costs and expenses would be included in the calculation of the cost of electrical service provide to Central by Santee Cooper.

39. Therefore, pursuant to the powers granted this Court under the South Carolina Declaratory Judgment Act, Santee Cooper respectfully requests this Court enter an Order declaring:

- (a) that the Project is a “shared resource” under the binding terms of the Coordination Agreement;
- (b) Central has no right to opt out of the Project; and, therefore,
- (c) Central remains obligated to pay its full share of costs and expenses relating to the Project in accordance with the cost of service methodology specified by the Coordination Agreement.

[Signature Page Attached]

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Columbia, South Carolina
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