

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )  
THIRTEENTH JUDICIAL CIRCUIT )

COUNTY OF GREENVILLE )

Jessica S. Cook, Corrin F. Bowers & Son, Cyril )  
B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna )  
Jenkins, Chris Kolbe, and Ruth Ann Keffer, on )  
behalf of themselves and all others similarly )  
situated, )

CASE NO. 2019-CP-23-06675

Plaintiffs, )

ORDER APPROVING PLAN FOR )  
FURTHER ADMINISTRATION AND )  
SUBSEQUENT DISTRIBUTIONS OF )  
SETTLEMENT )

v. )

South Carolina Public Service Authority, an )  
Agency of the State of South Carolina (also )  
known as Santee Cooper); W. Leighton Lord, III, )  
in his capacity as chairman and director of the )  
South Carolina Public Service Authority; )  
William A. Finn, in his capacity as director of the )  
South Carolina Public Service Authority; Barry )  
Wynn, in his capacity as director of the South )  
Carolina Public Service Authority; Kristofer )  
Clark, in his capacity as director of the South )  
Carolina Public Service Authority; Merrell W. )  
Floyd, in his capacity as director of the South )  
Carolina Public Service Authority; J. Calhoun )  
Land, IV, in his capacity as director of the South )  
Carolina Public Service Authority; Stephen H. )  
Mudge, in his capacity as director of the South )  
Carolina Public Service Authority; Peggy H. )  
Pinnell, in her capacity as director of the South )  
Carolina Public Service Authority; Dan J. Ray, in )  
his capacity as director of the South Carolina )  
Public Service Authority; David F. Singleton, in )  
his capacity as director of the South Carolina )  
Public Service Authority; Jack F. Wolfe, Jr., in )  
his capacity as director of the South Carolina )  
Public Service Authority; Central Electric Power )  
Cooperative, Inc.; Palmetto Electric Cooperative, )  
Inc.; South Carolina Electric & Gas Company; )  
SCANA Corporation, SCANA Services, Inc., )

Defendants. )

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This matter comes before the Court on the parties' Consent Motion for Approval of Plan for Subsequent Settlement Distributions. This Court entered an Amended Final Order and Judgment ("Amended Final Order") on July 31, 2020. The Order gave final approval to a class action settlement that provided, among other things, a \$520 million cash payment to the Class. The cash component of the Settlement included \$320 million from the sale of Dominion Energy, Inc. ("Dominion") stock and \$200 million paid by the South Carolina Public Service Authority ("Santee Cooper") in three annual installments in the amounts of \$65 million, \$65 million, and \$70 million. The Amended Final Order provided for two distributions to the Class, one following the initial funding of the settlement, and one following Santee Cooper's final \$70 million installment in 2023, which Santee Cooper has paid in accordance with the Settlement Agreement. The parties' Consent Motion seeks approval of a plan for subsequent administration of the settlement, including distributions to Class Members.

For the reasons set forth below, the Court grants the parties' motion for approval of a plan for further administration and subsequent distributions of the settlement funds to Class Members.

#### **Addition of Unclaimed Payments to Second Distribution**

1. The parties complied with their obligations to fund the settlement and accomplished the first distribution of cash benefits to Class Members in accordance with the plan of allocation approved as noted in the Amended Final Order. However, a sizable number of Class Members who received a paper check did not cash their settlement checks. The outstanding balance of the 458,131 uncashed settlement checks totaled \$26,227,860.37 as of October 19, 2022. In addition to the uncashed checks, 73,779 checks totaling \$4,574,032.49 were undeliverable because they are payable to Class Members for whom the Settlement Administrator

was not able to obtain a valid address. All remaining non-negotiated checks expired on October 22, 2022 and were voided.

2. Recognizing that a paramount objective of the Settlement is the Class Members' realization of the benefits of cash payments, and based on their experience with the first cash distribution, the parties seek an order authorizing the following steps to address the issue of Class Members not cashing their settlement checks:

- a. Class Members who did not cash their first settlement check and for whom the Settlement Administrator has a valid address will have their pro rata share of the initial distribution added to their pro rata share of the second distribution.
- b. The aggregate amount of the unclaimed payments to Class Members for whom the Settlement Administrator does *not* have a valid address will be allocated pro rata to the remaining Class Members in the second distribution.
- c. Class Members who are current customers of Santee Cooper or an Electric Cooperative at the time of the second distribution will receive their pro-rata share of the second distribution by bill credit if the amount of such pro-rata share is equal to or less than \$50.00. This is an increase of \$25.00 over the amount specified in the Settlement Agreement and Release, and the increase does not affect any other terms of the Settlement.

**Unclaimed Funds/Additional Distribution via Bill Credit for Current Customers Who Do Not Cash Checks**

3. The Settlement Agreement provides that payments made to Class Members via check will be deemed unclaimed in the following situations:

- a. The Settlement Administrator cannot obtain an address for a Class Member who is a *former* customer, and the Class Member who is a *former* customer does not contact the Settlement Administrator within 120 Days after the distribution.
- b. The Class Member who is a *former* customer does not cash the check within one hundred and twenty (120) Days or the Settlement Administrator is unable to locate an address for a Class Member who is a *former* customer whose check is returned within one hundred and twenty (120) Days of payment.

Settlement Agreement, Exhibit A, Distribution Plan, IV.B.3. The Settlement Agreement does *not* define when payments to Class Members who are *current* customers will be deemed unclaimed. Moreover, the Settlement Agreement does not provide for what happens to unclaimed payments from the initial distribution.

4. To attempt to deliver the value of the cash component of the settlement to Class Members who do not cash their checks following the second distribution, and to define the point at which payments to current customers will be deemed unclaimed, the parties seek an order authorizing the following steps to try to ensure the fullest realization of benefits:

- a. To the extent any Class Members who are *current* customers do not timely cash their second settlement check, the parties request an additional distribution to these Class Members via bill credit, as further described below and in the parties' Consent Motion. Any funds remaining after this additional distribution via bill credits will be deemed unclaimed funds and distributed as such according to the terms of the Settlement Agreement.
- b. To the extent any Class Members who are *former* customers do not timely cash their second settlement check, the applicable terms of the Settlement Agreement pertaining to unclaimed funds shall apply and be effectuated.

**Further Administration, Including Additional Distribution via Bill Credit, and Deadlines**

5. Santee Cooper's final \$70 million payment was made on September 26, 2022. Before the second distribution can be accomplished, it is necessary to update Class Members' payment information. To account for this updating and for the additional distribution via bill credit as described herein, the parties seek an amendment and extension of certain deadlines.

6. The Settlement Agreement dictates whether Class Members receive payment via check or bill credit depending on customer status (current or former) and payment amount. (As noted above, the parties are seeking an increase in the threshold for payments by check.) In order for the Settlement Administrator to make these determinations, it is obtaining updated Class

Member information from Santee Cooper and all 20 Electric Cooperatives regarding each Class Member's customer status. Many of the Electric Cooperatives need the assistance of outside technology service providers to compile the updated Class Member information.<sup>1</sup> Upon receipt of this information from Santee Cooper and the Electric Cooperatives, the Settlement Administrator needs to make individual pro rata payment calculations for the 1,660,263 Class Members using the same process used for the initial distribution.

7. As of October 19, 2022, the balance available for distribution, including the uncashed settlement checks discussed above, was approximately \$166,246,029.24. The parties' Consent Motion proposes the following:

- a. Upon entry of an order approving this motion, the second distribution via check and bill credit will be scheduled to begin on February 16, 2023.
- b. No later than February 6, 2023, the Settlement Administrator shall remit to Santee Cooper and the Electric Cooperatives the final distribution amount payable to them (if not previously remitted)—that is, the sums corresponding to distributions to be made by bill credits.
- c. By March 6, 2023 Settlement Administrator shall complete the mailing of checks.
- d. By March 18, 2023 Santee Cooper and the Electric Cooperatives shall complete bill credits.
- e. Eligible Class Members will have 120 Days to cash checks.
- f. For Class Members who are current customers and who do not cash their checks, a further distribution via bill credit will be effectuated according to the schedule set forth in the parties' Consent Motion.

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<sup>1</sup> As with the initial distribution, the Electric Cooperatives will incur third-party costs to gather Class Member data and effectuate bill credits. The parties estimate these costs should not exceed \$50,000.00. The costs to be incurred will be for the common benefit, and the parties request that they be paid by the Settlement Administrator from the settlement fund.

### **Conclusion**

The Court finds the requests set forth in the parties' Consent Motion advance the goals of efficiency and directing as much of the settlement benefits to Class Members as possible. Accordingly, the Court grants the motion and **ORDERS** the following:

1. The second distribution shall consist of the funds remaining in the Common Benefit Fund, less (1) taxes and tax expenses; (2) administrative costs; and (3) for Class Members who submitted a valid Request for Exclusion, the pro rata amount those Class Members would have received had they not submitted such a request, and will be distributed pro rata to all Class Members except those for whom the Settlement Administrator does not have a valid address.

2. Those Class Members, both current and former, who did not cash their first settlement check and for whom the Settlement Administrator has a valid address will have their pro rata share of the initial distribution added to their pro rata share of the second distribution.

3. As for those Class Members who did not cash their first settlement check and for whom the Settlement Administrator does *not* have a valid address, the aggregate amount of their uncashed checks will be allocated pro rata to the remaining Class Members in the second distribution.

4. Class members who are customers of Santee Cooper or an Electric Cooperative at the time of the second distribution will receive their pro-rata share of the subsequent distribution by bill credit if the amount of such pro-rata share is equal to or less than \$50.00.

5. The costs incurred by the Electric Cooperatives to gather Class Member data and effectuate bill credits not to exceed \$50,000.00 will be paid by the Settlement Administrator from the Common Benefit Fund.

6. With regard to the second distribution, the deadline for the Settlement Administrator to complete the mailing of checks is extended until March 6, 2023, and the deadline for Santee Cooper and the Electric Cooperatives to complete the application of bill credits is extended until March 18, 2023.

7. No later than February 6, 2023, the Settlement Administrator shall remit to Santee Cooper and the Electric Cooperatives the sums corresponding to distributions to be made by bill credits.

8. To the extent any Class Members who are *former* customers do not timely cash their settlement check for the second distribution, the applicable terms of the Settlement Agreement pertaining to unclaimed payments shall apply and be effectuated.

9. To the extent any Class Members who are *current* customers do not timely cash their settlement check for the second distribution within 120 Days, a final distribution to these Class Members will be made via bill credit regardless of the amount of the pro-rata share owed, as follows:

- a. First, within 30 days of the expiration of the check cashing period, the Settlement Administrator shall provide Santee Cooper and the Electric Cooperatives with (a) information identifying the Class Members who are current customers who did not cash checks after the second distribution; (b) information sufficient for Santee Cooper and the Electric Cooperatives to apply bill credits to these current customers' accounts; and (c) funds for such credits ("Final Bill Credit Information and Funds").
- b. Second, within 30 days of receipt of the Final Bill Credit Information and Funds, Santee Cooper and the Electric Cooperatives shall begin applying the credits to the Class Members' accounts. The credits will be applied over the course of the 30-day billing cycle.
- c. Third, in the event Santee Cooper and the Electric Cooperatives are unable to effectuate the entirety of the bill credits to a Class Member's account, within 60 Days of receipt of the Final Bill Credit Information and Funds, Santee Cooper and the Electric Cooperatives shall notify the Settlement

Administrator and shall remit back to the Settlement Administrator any remaining funds and identification of the Class Members for whom credits were not applied.

- d. Fourth, any funds remaining after Santee Cooper and the Electric Cooperatives have completed the foregoing process and have attempted this additional bill credit will be deemed unclaimed funds and shall be distributed 50% to the South Carolina Bar Foundation and 50% to charitable organizations that provide energy assistance to low income individuals.

**IT IS SO ORDERED.**

[JUDGE'S E-SIGNATURE TO FOLLOW]





Greenville Common Pleas

**Case Caption:** Jessica S Cook vs. Santee Cooper , defendant, et al

**Case Number:** 2019CP2306675

**Type:** Order/Other

So Ordered

Jean H. Toal

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