

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
)	Authority's Answer to Plaintiffs'
South Carolina Public Service Authority,)	Fourth Amended Complaint and
(also known as Santee Cooper), et al.,)	Cross-Claims
)	
Defendants.)	
)	
)	

Defendant South Carolina Public Service Authority ("Santee Cooper") and the Director Defendants¹ hereby answer the Plaintiffs' Fourth 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 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.

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.

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. Santee Cooper and the Director Defendants admit the allegations in paragraphs 10, 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.

6. Santee Cooper and the Director Defendants admit Santee Cooper provides electrical service. The remaining allegations of Paragraph 15 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 15 are denied.

7. 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 16 of the Complaint, and, therefore, those allegations are denied.

8. Paragraph 17 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 17 are denied.

9. Responding to paragraph 18 of the Complaint, Santee Cooper and the Director Defendants admit that on July 31, 2017, Santee Cooper announced the decision to suspend construction of two nuclear reactors (Unit 2 and Unit 3) at the V.C. Summer facility in Fairfield County, South Carolina (the "Project"). Santee Cooper admits 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 18, and, therefore, those allegations are denied.

10. Santee Cooper and the Director Defendants accept the allegations of paragraph 19 as true as alleged regarding the production of electricity.

11. Responding to paragraph 20 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. Any remaining allegations in paragraph 20 are denied.

12. Responding to paragraph 21 of the Complaint, Santee Cooper and the Director Defendants admit that prior to 2007 Santee Cooper entered into agreements with SCE&G regarding the design, permitting, construction, and joint ownership of two new nuclear generation units at V.C. Summer in Fairfield County. Santee Cooper and the Director Defendants crave reference to those agreements. Any other allegations of paragraph 21 are denied.

13. Responding to paragraph 22 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. 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 22 that are inconsistent therewith. Santee Cooper and the Director Defendants admit that Central and its member cooperatives had the ability to provide input and insight about the Project. Any remaining allegations in paragraph 22 are denied.

14. Responding to paragraph 23 of the Complaint, Santee Cooper and the Director Defendants deny that Santee Cooper announced that it was abandoning the Project, but 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 and its intention to seek approval of an abandonment plan as to 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 23, and, therefore, those allegations are denied.

15. Responding to paragraph 24 of the Complaint, Santee Cooper and the Director Defendants admit that providing Santee Cooper's customers with economical and reliable energy and Santee Cooper's need for additional base load capacity were among the reasons for Santee Cooper entering into the Project but were not the only basis for Santee Cooper's involvement with 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 24, and, therefore, those allegations are denied.

16. Santee Cooper and the Director Defendants deny the allegations in paragraph 25 of the Complaint.

17. Responding to paragraph 26 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 consisting of Westinghouse and Stone & Webster, Inc. Santee Cooper and the Director Defendants further admit that Westinghouse was a subsidiary of Toshiba. With regard to the remaining allegations in paragraph 26, Santee Cooper and the Director Defendants crave reference to the EPC and deny any remaining allegations inconsistent therewith.

18. Responding to paragraph 27 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 regarding what was told to federal licensing authorities in March 2008, and, therefore, these allegations are denied. Santee Cooper and the Director Defendants further respond by craving reference to the August 20, 2018 direct testimony of Kevin Marsh, submitted to the Public Service Commission in Docket No. 2008-196-E, in which Marsh testified that a “dedicated group of SCE&G personnel . . . will monitor each aspect of the construction process on a day-to-day basis and will report progress, issues and variances to an executive steering committee that includes [Marsh] as SCE&G’s president, and a senior executive from Santee Cooper and to the SCANA board of directors.”

19. Santee Cooper and the Director Defendants deny the allegations in paragraph 28 of the Complaint.

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

21. Responding to paragraph 30 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 30 are denied.

22. Responding to paragraph 31 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper spent money on materials, construction, financing costs and expenses related to the Project, and that rates charged to customers included recovery of certain of these costs. 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 31 of the Complaint, and, therefore, those allegations are denied.

23. Responding to paragraph 32 of the Complaint, Santee Cooper and the Director Defendants admit that delays in the delivery of submodules were experienced relatively early, and increased costs and other setbacks occurred over the course of time. Any remaining in paragraph 32 are denied.

24. Responding to paragraph 33 of the Complaint, Santee Cooper and the Director Defendants admit that the EPC was amended in October 2015. 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 33 and deny any allegations inconsistent therewith. Any remaining allegations in paragraph 33 are denied.

25. Responding to paragraph 34 of the Complaint, Santee Cooper and the Director Defendants crave reverence to the October 2015 EPC Amendment and deny any allegations inconsistent therewith.

26. Paragraph 35 of the Complaint consists of seven 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 admit that: (i) Santee Cooper and SCE&G never received a fully-integrated, resource-loaded schedule from the consortium; (ii) as early as 2013 Santee Cooper had concerns about cost overruns and design delays and their effect on the project schedule; (iii) in 2015 attorney George Wenick, counsel for Santee Cooper and SCE&G, hired Bechtel Corporation (“Bechtel”) to provide consulting services in accordance with a Professional Services Agreement, that described the work to be performed;

(iv) Santee Cooper received Bechtel's final written report in February 2016; (v) Santee Cooper encouraged SCE&G to join it in retaining bankruptcy counsel; and (vi) Santee Cooper and SCE&G exercised the fixed price option under the October 2015 EPC Amendment in 2016. Santee Cooper and the Director Defendants further crave reference to any documents referenced within paragraph 35 and deny any allegations inconsistent therewith. Any remaining allegations in paragraph 35 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 36 of the Complaint, and, therefore, those allegations are denied.

28. Santee Cooper and the Director Defendants deny the allegations in paragraph 37 of the Complaint.

29. Santee Cooper and the Director Defendants deny the allegations in paragraph 38 of the Complaint.

30. Responding to paragraph 39 of the Complaint, Santee Cooper and the Director Defendants admit that Central purchases electric power from Santee Cooper and sells that power to some of its 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 was involved in Santee Cooper's decisions regarding the Project, and that Central monitored and was kept informed of the Project. The remainder of paragraph 39 contains legal conclusions or argumentative conclusions which require no response. To the extent any additional response is required, and remaining allegations in paragraph 39 are denied.

31. Responding to paragraph 40 of the Complaint, Santee Cooper and the Director Defendants admit that Central and its member cooperatives had access to information regarding the Project from its inception. The remaining allegations in paragraph 40 are denied.

32. Responding to paragraph 41 of the Complaint, Santee Cooper and the Director Defendants admit that the distribution cooperatives are owned by their customers and that the cooperatives had access to information regarding the Project. The remainder of paragraph 41 states legal conclusions that require no response. To the extent that any response is required, any remaining allegations in paragraph 41 are denied.

33. Paragraph 42 of the Complaint states legal conclusions that require no response. To the extent that any response is required, any remaining allegations in paragraph 42 are denied.

34. Paragraph 43 of the Complaint states legal conclusions that require no response. To the extent that any response is required, any remaining allegations in paragraph 43 are denied.

35. Responding to paragraph 44 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper has invested in the Project. Those amounts are reflected in public documents and Santee Cooper refers specifically to those. Santee Cooper denies any allegations inconsistent with those documents. Santee Cooper and the Director Defendants further admit that, in accordance with S.C. Code Ann. §§ 58-31-30(13) and 58-31-360, 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. As to the allegations regarding indirect customers, Santee Cooper and the Director Defendants admit only that Central's financial obligations are determined in accordance with the Coordination Agreement and crave reference to the Coordination Agreement and deny any allegations in paragraph 44 inconsistent therewith. Any remaining allegations in paragraph 44 are denied.

36. Responding to paragraph 45 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper's rates were increased 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 44 are denied.

37. Responding to paragraph 46 of the Complaint, Santee Cooper and the Director Defendants deny that the "aforementioned rate increases" apply to any "indirect customers" and deny that any rate increases as to its retail rates are "specifically tailored" to do anything other than establish rates which are 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. These denials apply to any further use of the term "increased rates" in the Complaint. Any remaining allegations in paragraph 46 are denied.

38. Responding to paragraph 47 of the Complaint, Santee Cooper and the Director Defendants crave reference to the cited code section and deny any allegations inconsistent therewith.

39. Responding to paragraph 48 of the Complaint, Santee Cooper and the Director Defendants admit that Santee Cooper's rate setting authority is governed by 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 48 are denied.

40. Responding to paragraph 49 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.

41. Responding to paragraph 50 of the Complaint, Santee Cooper and the Director Defendants crave reference to S.C. Code Ann. § 58-31-55 and deny any allegations inconsistent therewith.

42. Responding to paragraph 51 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.

43. Responding to paragraph 52 of the Complaint, Santee Cooper and the Director Defendants admits 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 S.C. Code Ann. §§ 58-31-30(13) and 58-31-360, and that no additional rate increases have been approved by the Board. Santee Cooper further admits that pursuant to S.C. Code Ann. §§ 58-31-30(13) and 58-31-360, 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. Santee Cooper and the Director Defendants admit that Santee Cooper estimates that the costs and expenses associated with the Project represent approximately 4.3% of the average retail customer's monthly bill. 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 52, and, therefore, those allegations are denied.

44. Responding to paragraph 53 of the Complaint, Santee Cooper and the Director Defendants deny that Santee Cooper acted improperly with respect to 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 53, and, therefore, those allegations are denied.

45. Santee Cooper and the Director Defendants deny the allegations in paragraph 54 of the Complaint.

46. Santee Cooper and the Director Defendants deny the allegations in paragraph 55 of the Complaint which relate to Santee Cooper's executives. 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 55, and, therefore, those allegations are denied.

47. Santee Cooper and the Director Defendants deny the allegations in paragraph 56 of the Complaint.

48. Paragraphs 57, 58, and 59 of the Complaint purport to identify and define a proposed class, and, as such require no response. To the extent that a response is required, Santee Cooper and the Director Defendants deny that these paragraphs properly define a permissible class under Rule 23, SCRCF, and deny that class treatment is appropriate in this action. Any remaining allegations in paragraphs 57, 58, and 59 are denied.

49. Responding to paragraph 60 of the Complaint, Santee Cooper and the Director Defendants admit that the class, as defined, is so numerous that joinder of all of its members is impracticable. The remaining allegations in paragraph 60 are denied.

50. Santee Cooper and the Director Defendants deny the allegations in paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71 of the Complaint.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

51. Responding to paragraph 72 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

52. Responding to paragraph 73 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.

53. Responding to paragraph 74 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.

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

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

55. Responding to paragraph 76 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

56. Santee Cooper and the Director Defendants deny the allegations in paragraphs 77, 78, 79, 80 and 81 of the Complaint.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

57. Responding to paragraph 82 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

58. Santee Cooper and the Director Defendants deny the allegations in paragraphs 83, 84, 85, 86, 87, 88 and 89 of the Complaint.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

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

60. Santee Cooper and the Director Defendants deny the allegations in paragraphs 91, 92, 93, 94, 95 and 96 of the Complaint.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

61. 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.

62. Responding to paragraphs 98 and 99 of the Complaint, Santee Cooper and the Director Defendants crave reference to Article I, Section 13(A) of the South Carolina Constitution and deny any allegations in paragraphs 98 and 99 inconsistent therewith.

63. Santee Cooper and the Director Defendants deny the allegations in paragraphs 100, 101, 102, 103 and 104 of the Complaint.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

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

65. Responding to paragraph 106 of the Complaint, Santee Cooper and the Director Defendants crave reference to Article I, Section 3 of the South Carolina Constitution and deny any allegations in paragraph 106 inconsistent therewith.

66. Santee Cooper and the Director Defendants deny the allegations in paragraphs 107, 108, 109 and 110 of the Complaint.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

67. Responding to paragraph 111 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

68. Responding to paragraph 112 of the Complaint, Santee Cooper and the Director Defendants admit that Central sells power to the cooperatives. The remaining allegations in paragraph 112 are denied.

69. Santee Cooper and the Director Defendants deny the allegations in paragraphs 113, 114, 115, 116 and 117 of the Complaint.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION

70. Responding to paragraph 118 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

71. Paragraph 119 of the Complaint states legal conclusions which require no response. To the extent that a response is required, the allegations in paragraph 119 are denied.

72. Santee Cooper and the Director Defendants deny the allegations in paragraphs 120, 121 and 122 of the Complaint.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION

73. 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.

74. Paragraphs 124, 125, 126, 127 and 128 relate to a claim asserted only against SCE&G and SCANA, and, therefore, 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 TENTH CAUSE OF ACTION

75. Responding to paragraph 129 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

76. Santee Cooper and the Director Defendants deny the allegations in paragraphs 130, 131, 132 and 133 of the Complaint.

FOR A FIRST DEFENSE TO THE ELEVENTH CAUSE OF ACTION

77. Responding to paragraph 134 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

78. Santee Cooper and the Director Defendants deny the allegations in paragraphs 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145 and 146 of the Complaint.

FOR A FIRST DEFENSE TO THE TWELFTH CAUSE OF ACTION

79. Responding to paragraph 147 of the Complaint, Santee Cooper and the Director Defendants incorporate their prior responses in this Answer as if fully restated herein.

80. Paragraph 148 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 148 inconsistent therewith.

81. Santee Cooper and the Director Defendants deny the allegations in paragraphs 149 and 150 of the Complaint.

82. 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

83. 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

84. 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

85. 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

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

FOR A FIFTH DEFENSE

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

FOR A SIXTH DEFENSE

88. 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

89. 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

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

FOR A NINTH DEFENSE

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

FOR A TENTH DEFENSE

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

FOR AN ELEVENTH DEFENSE

93. 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

94. 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

95. 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

96. 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

97. 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

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

FOR A SEVENTEENTH DEFENSE

99. 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

100. 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

101. 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

102. 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

103. 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

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

FOR A TWENTY-THIRD DEFENSE

105. 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

106. 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

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

FOR A TWENTY-SIXTH DEFENSE

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

FOR A TWENTY-SEVENTH DEFENSE

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

FOR A TWENTY-EIGHTH DEFENSE

110. 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

111. 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

112. 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

113. 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

114. 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

115. 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

116. 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

117. 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

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

FOR A THIRTY-SEVENTH DEFENSE

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

FOR A THIRTY-EIGHTH DEFENSE

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

FOR A THIRTY-NINTH DEFENSE

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

FOR A FORTIETH DEFENSE

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

FOR A FORTY-FIRST DEFENSE

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

FOR A FORTY-SECOND DEFENSE

124. 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

125. Santee Cooper and the Director Defendants assert venue is improper and the claims should be transferred to the proper venue.

126. 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 Fourth Amended Complaint of the Plaintiffs, Santee Cooper and the Director Defendants pray that the Fourth Amended Complaint

be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

**FOR A FORTY-FOURTH 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, including breaches of duties running from SCE&G to Santee Cooper and to Santee Cooper’s customers related to the construction of Virgil C. Summer Nuclear Station Units 2 and 3 (the “Project”). (*See* 4th Am. Compl. ¶¶ 118–19).

7. Allegations about SCE&G's wrongdoing and unjust enrichment are woven into the fabric of Plaintiffs' claims against Santee Cooper and allegations of damage to Santee Cooper's customers:

(a) "The funding that Santee Cooper provided for the voluntarily abandoned Project came out of Plaintiffs' pockets, flowed upstream, and ended in one of two places—abandoned property in Fairfield County or in the SCANA shareholders' pockets." (*See id.* ¶ 37).

(b) SCANA and SCE&G voluntarily assumed duties to Santee Cooper's direct and indirect customers and breached those duties "by mismanaging the Project, abandoning the Project, and making numerous false and misleading statements along the way." (*See id.* ¶ 43).

(c) "SCANA and SCE&G have reaped and will continue to reap substantial profit despite the Project's abandonment." (*See id.* ¶ 53).

(d) "SCANA's and SCE&G's shareholders and executives have similarly reaped financial windfalls." (*See id.* ¶ 55).

(e) "SCANA and SCE&G contracted with Santee Cooper . . . to be the 'operator' for the construction of the Project, meaning SCANA and SCE&G voluntarily assumed certain management and oversight responsibilities on behalf of Santee Cooper and its direct and indirect customers." (*See id.* ¶ 124).

(f) SCANA and SCE&G breached those contracts because the Project has been abandoned and Santee Cooper's direct and indirect customers will never receive any benefits from the Project. (*See id.* ¶ 126).

(g) SCANA and SCE&G breached the covenant of good faith and fair dealing by engaging in wrongful and misleading conduct, including making false representations concerning the Project's viability, which misled Santee Cooper and Santee Cooper's direct and indirect customers. (*See id.* ¶ 127).

8. Plaintiffs seek disgorgement of benefits realized by SCE&G as a consequence of its alleged misconduct. (*See id.* ¶¶ 129–33).

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 Fourth 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 Fourth 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 Fourth 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' Fourth 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 Fourth 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 Fourth 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 Fourth 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 Fourth 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 Fourth 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.

WHEREFORE, having fully answered Plaintiffs' Fourth Amended Complaint and asserted its cross-claims against SCE&G, Santee Cooper and the Director Defendants pray for the following relief:

(a) That the Court dismiss all claims against Santee Cooper and the Director Defendants with prejudice; or

(b) 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

(c) That SCE&G indemnify Santee Cooper for any judgment entered against Santee Cooper for the allegations in the Fourth 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

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

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Columbia, South Carolina
December 27, 2018

CERTIFICATE OF SERVICE

I, the undersigned representative of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Public Service Authority, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by having them delivered to the following address(es) pursuant to Case Management Order No. 4:

Documents Served Via Email:

- South Carolina Public Service Authority's Answer to Plaintiffs' Fourth Amended Complaint and Cross-Claims

Parties Served:

pvcslc@speightsandsolomons.com
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