Table of Contents

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON Richard Lightsey, LeBrian Cleckley, Phillip Cooper, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, SCANA Corporation, and the State of South Carolina, Defendants, South Carolina Office of Regulatory Staff, Intervenor.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-25-335 **CLASS COUNSEL'S APPLICATION FOR REIMBURSEMENT OF EXPENSES AND A CONTINGENCY FEE AWARD**

TABLE OF CONTENTS

I. INTRODUCTION

Class counsel respectfully move for reimbursement of costs and a contingency fee award of three percent (3%) of the class benefit in this action. As counsel demonstrate below, case law and public policy considerations fully support this application. A review of the history of the case shows the result to be an extraordinary achievement that surmounted numerous procedural, discovery, and substantive hurdles to accomplish what others had failed to do – recover funds for customers challenging a utility's nuclear construction decisions.

II. SUMMARY OF THE NUCLEAR DEBACLE

To understand the significant role Plaintiffs' legal team played in the resolution of the V.C. Summer nuclear power plant debacle, it is necessary to go back to its beginning. In April 2007, while George Bush occupied the White House and Mark Sanford was the Governor of South Carolina, SCE&G's lobbyists helped to secure passage of the Base Load Review Act ("BLRA"). The act became effective on May 3, 2007 and allowed utilities to charge advance financing costs for nuclear projects under construction.

Just over a year later, on May 27, 2008, SCE&G and Santee Cooper announced plans for a $9.8 billion nuclear expansion project at the V.C. Summer plant in Fairfield County. Three days later, SCE&G asked the Public Service Commission ("PSC") to approve the first of many rate increases to fund the nuclear project. Over the next nine years, South Carolina customers faced nine increases which collectively required them to pay in excess of $2 billion into the project. With each rate increase request, SCE&G assured the regulators that the project was proceeding satisfactorily with manageable scheduling issues.

On July 31, 2017, the landscape drastically shifted. SCE&G's customers were shocked when SCE&G and Santee Cooper announced they were abandoning work on the nuclear plant project. The very next day, SCE&G filed an abandonment petition with the PSC requesting permission to charge customers for up to $5.25 billion spent on the project. Having already been charged in excess of $2 billion in financing costs for the project, SCE&G's customers were facing the prospect of being responsible for billions more.

While the project abandonment surprised customers, SCE&G had known that this prospect was looming for years. By maintaining a publicly positive story to regulators, investors, and legislators, SCE&G was able to keep the project alive while running up the bill and maintaining its projected revenue. In truth, the project had spiraled out of control, fallen months and then years behind schedule, and resulted in cost overruns in the millions, then billions of dollars.

This unprecedented, high stakes legal, economic, and political battle spawned the biggest and most complex utility case in South Carolina history. The citizens of South Carolina, and particularly SCE&G's customers, were in desperate need of someone to step forward to fight for them.

The rising electric rates resulting from the BLRA increases not only impacted individual South Carolina residents, but business and industry as well. High electric rates create less incentive for current business to expand and new industry to arrive. The nuclear debacle threatened long-term economic consequences for the entire state. South Carolina's citizens and businesses desperately needed relief.

When SCE&G filed its abandonment petition on August 1, 2017, it did not expect that a determined group of lawyers would join forces to prevent the full cost of SCE&G's actions from falling on its customers. With a herculean effort of time and money over fifteen months of hard fought litigation, these lawyers exposed SCE&G's conduct and forced it to the negotiating table. After several months of intense negotiations, the parties reached a settlement that removes a significant portion of the V.C. Summer electric rate load from customers' bills.

III. BACKGROUND

A. Birth of the Class Actions

When a decade of bad decisions about electric power needs, construction progress, cost overruns, and lax supervision led to the collapse of the nuclear plant project on July 31, 2017, customers were faced with an unprecedented situation. As noted above, SCE&G's lobbyists had helped secure passage of the BLRA ten years earlier. It allowed SCE&G to charge project financing costs before a project ever generated a watt of electricity. By the time the project imploded, SCE&G's customers had paid approximately $2 billion in financing costs and were facing billions more. On the day it abandoned the project, SCE&G unabashedly told customers it intended to charge them the total cost of the project and decades of profit as well:

> In accordance with the BLRA, we will seek an amortization of the project costs and a return at the weighted average cost of capital on the unamortized balance until fully recovered.[1]

Rather than accepting this bleak fate as inevitable, several courageous customers said, "no more." Although their individual claims were too small to justify taking on a

[1] July 31, 2017 SCANA News Release. Attach. 1.

behemoth electric utility like SCE&G, these customers found counsel willing to fight. Their law firms found hope in Rule 23 of the South Carolina Rules of Civil Procedure – the class action rule. Importantly, the lawyers willing to take on these highly speculative claims were among the most experienced class action and complex litigation attorneys in the state and nation. The challenge ahead would demand the best effort they could muster.

Beginning shortly after the public announcement of the cancellation of the nuclear plant project, Class counsel filed three lawsuits. Each case was brought on a contingency fee basis. As such, counsel knew they would be investing thousands of hours and hundreds of thousands of dollars with no hope of recompense unless they were successful. Counsel were aware they would face a powerful adversary with nearly-limitless legal resources. Moreover, SCE&G's lawyers would be fighting for the life of the company.

B. Plaintiffs Had No Time to Waste

From the outset, Class counsel were under enormous pressure to act quickly. Every day the BLRA remained operative, SCE&G was draining over a million dollars in advance financing costs from customers with no end in sight. On August 1, 2017, the day after terminating the nuclear plant project, SCE&G filed an abandonment petition with the PSC seeking to have the project's construction costs deemed "prudent," and thereby eligible to be included in its rate base. Acting quickly, Class counsel filed three lawsuits from August 11 – August 28, 2017: Cleckley v. SCE&G, No. 2017-CP-40-04833 (Richland County); Goodman v. SCE&G, No. 2017-CP-20-00300 (Fairfield County); and Lightsey v. SCE&G, No. 2017-CP-25-00335 (Hampton County). Counsel in Cleckley served initial discovery simultaneously with the summons and complaint.

Over the next fifteen months, as detailed below, Class counsel fought tenaciously against SCE&G's vigorous defense to fashion a strong legal basis for unprecedented relief. While others had tried and failed to get customers any recovery for funds spent on abandoned nuclear projects, Class counsel were determined this would not be the SCE&G customers' fate.

C. Plaintiffs Moved Decisively To Uncover The Truth

Shortly after the three cases were filed, the Governor's office secured a copy of an internal review of the nuclear plant project authored by Bechtel Power Corporation ("the Bechtel Report"). This report, commissioned by project owners SCE&G and Santee Cooper, documented in minute detail the vast problems facing the V.C. Summer project. Chief among these was that no viable construction schedule existed as of 2015, although the project had been ongoing since 2009. In addition, the report contained a number of harsh criticisms of SCE&G in its role as the project manager. The report recommended that SCE&G retain outside professional construction management. On September 4, 2017, the Governor released the 2016 Bechtel Report. Unbeknown to the Governor and others, however, this was not the original Bechtel Report. It took months of discovery to reveal the original November 2015 Bechtel Report which Bechtel had "scrubbed" at the urging of SCE&G and Santee Cooper. SCE&G insisted that the original report "must be softened" as it was "too rough" on SCE&G.[2]

As details of the Bechtel Report emerged, Class counsel suspected there was much more damaging information yet to be uncovered. At the same time, counsel recognized a formidable legal obstacle to their effort. The BLRA was the vehicle that had

[2] Feb. 4, 2016 Tel-Con with Ty Troutman. Attach. 13.

empowered SCE&G's rate requests for the nuclear plant project. Class counsel devised a strategy to neutralize that obstacle. Working in concert with the South Carolina Attorney General, Class counsel researched the potential unconstitutionality of the BLRA. On September 26, 2017, the Attorney General issued an opinion finding the BLRA constitutionally "suspect." The following day, the Cleckley plaintiffs filed their first amended complaint, asking this Court to declare the BLRA unconstitutional as a violation of equal protection and substantive and procedural due process under the State and Federal Constitution.

Throughout the course of the litigation, SCE&G reacted forcefully to any challenge to its rate collections. In its initial motion to dismiss filed on October 2, 2017, SCE&G asserted that Plaintiffs' claims were without legal basis and that all issues regarding the nuclear plant debacle must be heard at the PSC. SCE&G argued that Plaintiffs' claims were barred under the "filed rate doctrine" which prohibits a collateral attack on rates adopted by an administrative ratemaking agency. SCE&G pointed out that Plaintiffs' alleged damages had been collected under the BLRA's statutory mechanism of "revised rates." Plaintiffs countered that their damages were not "rates," as they had no connection to electric service, but were solely advance financing payments made for a benefit SCE&G never conferred.

As a result of the September 27, 2017 Cleckley amendment challenging the constitutionality of the BLRA, the State of South Carolina became a nominal defendant in the case. On October 12, 2017, SCE&G filed an amended motion to dismiss the Cleckley amended complaint. In the meantime, the Cleckley plaintiffs served supplemental

interrogatories and requests to produce, along with requests for admission on October 16, 2017.

D. Class Counsel Joined Forces For The Customers

While the three proposed class actions were proceeding with skilled counsel at the helm, the independent tracks of the cases risked duplication of effort and other inefficiencies. On October 26, 2017, counsel for the three putative SCE&G customer class actions met to consider how to prosecute these claims most effectively. Class counsel realized that attacking a formidable adversary like SCE&G on novel theories required strength and coordination. They agreed to work together, created an organizational structure, and moved forward cooperatively against the common defendant.

E. Plaintiffs Proceeded On Numerous Fronts To Uncover The Facts

The tasks confronting Class counsel were enormous. They had to respond to SCE&G's potentially fatal motion to dismiss while reviewing in excess of 700,000 pages of documents received from Santee Cooper via a Freedom of Information Act request. This information provided a valuable first look inside the project. It was particularly helpful because SCE&G had filed a motion for protective order on October 2, 2017 and was refusing to engage in any discovery. Class counsel engaged computer experts to assist in analyzing this enormous volume of documents and ultimately built their own database with custom software.

Despite SCE&G's delay in complying with discovery requests, Class counsel continued to push forward. On November 1, 2017, Plaintiffs filed a motion for appointment of a receiver to take custody of: (1) the monies SCE&G continued to receive for construction financing costs, and (2) the settlement payment from Toshiba Corporation

(parent of the defunct nuclear plant contractor Westinghouse). On November 3, 2017, the Court issued an order postponing a hearing on the receiver motion until the first week in January 2018. Three days later, Plaintiffs served receivership discovery on SCE&G.

Up to this point, SCE&G had refused to respond to Plaintiffs' first and second interrogatories and requests for production, Plaintiffs' first request to admit, and Plaintiffs' first discovery requests for appointment of a receiver. To keep the pressure on SCE&G, Plaintiffs served a 30(b)(6) deposition notice on SCE&G setting the deposition for November 17, 2017.

SCE&G's defense efforts were not limited to delaying discovery. It adopted the strategy that the best defense is a good offense. In response to the Court setting a status conference for November 20, 2017, SCE&G sent the Court a 187-page unsolicited submission. This tome attacked virtually all aspects of Plaintiffs' efforts. It was yet another product of SCE&G's well-organized and expertly-presented defense effort.

F. Class Counsel Provided The ORS Critical Aid In The PSC Proceedings

While working with the Attorney General on issues of common interest concerning SCE&G's statutory rate authority, Class counsel were contacted by counsel for the Office of Regulatory Staff ("ORS") regarding its parallel proceedings. Class counsel realized that their class efforts could be undermined by adverse developments at the PSC. The ORS employs dedicated public servants. But its staff was vastly outnumbered and outmatched in resources by the legal and lobbying effort SCE&G had mounted to protect its ability to collect nuclear project financing costs. The ORS had only a few lawyers on

staff who were dealing with a variety of regulatory matters.[3] SCE&G had multiple lawyers devoted to the BLRA controversy. To help even the playing field, Class counsel engaged with the ORS and offered assistance in discovery, document review, and presenting the ORS case against SCE&G over the demise of the nuclear plant project.

Assisting the ORS in preparing for the PSC hearing was especially critical because, under the BLRA, no customer had the right to challenge revised rate proceedings until after the PSC issued an order incorporating new costs into customer charges. And even then, the participation was limited to asserting a miscalculation of the rate. The BLRA prohibited a customer from substantively objecting to revised rates. This continued absence of due process at each stage of the BLRA proceedings was the crux of Plaintiffs' constitutional challenge. Class counsel realized they would be helping the class have a voice at the PSC by helping the ORS present its case.

Following meetings with the ORS, Class counsel learned that the ORS had briefing due in the PSC on SCE&G's request to have the V.C. Summer construction costs deemed prudent after project abandonment. Class counsel agreed to provide whatever assistance the ORS needed. As shown below, that assistance was substantial.

G. As Plaintiffs' Multi-Faceted Efforts Accelerated, SCE&G Intensified Its Defense

Class counsel attended the Court's first in-person status conference on November 20, 2017. In a packed courtroom in Rock Hill, SCE&G previewed its motion to dismiss. SCE&G touted the PSC as the only forum where the issues raised in the class complaints could properly be heard. Class counsel used their time, as the Court had instructed, to

[3] Affidavit of Nanette S. Edwards, ¶ 2. Attach. 10.

update the Court about the Plaintiffs' progress in organizing themselves and assigning lead and liaison counsel. At the conference, the Court set SCE&G's motion to determine jurisdiction and Plaintiffs' motions for class certification and appointment of a receiver for a hearing on January 8, 2018. The Court also allowed Plaintiffs to conduct limited discovery on the appointment of a receiver.

Six days before the January 8, 2018 hearing, SCE&G served 90 pages of briefing, including an "omnibus memorandum" in support of its motion to dismiss for lack of subject matter jurisdiction, and a memorandum in support of dismissing the BLRA constitutional challenge. The hearing was a marathon. SCE&G's counsel made a five-hour argument setting forth in excruciating detail its position why Plaintiffs' claims were without merit. Class counsel rebutted SCE&G's attempt to steer the controversy to the PSC, pointing out the PSC's inability to order refunds. Class counsel forcefully argued that such damages were purely within the purview of the circuit court. They also pointed out that the PSC could not decide the constitutionality of the BLRA.

On February 8, 2018, this Court issued instructions for an order denying SCE&G's motion to dismiss. Specifically, the Court found the "filed rate doctrine" did not bar Plaintiffs' claims, and the Court had jurisdiction to resolve the issues set forth in Plaintiffs' well-pleaded complaint. The Court also requested briefing and argument on the constitutional issue. It set a hearing on Plaintiffs' motion for class certification and appointment of receiver for the week of April 30, 2018.

Class counsel continued to put pressure on SCE&G. On February 22, 2018, they sent a non-spoliation letter to SCE&G requesting preservation of the property at the V.C. Summer project site. On February 26, 2018, they served additional discovery on SCE&G,

and requested immediate responses to discovery that had been outstanding since August 2017.

SCE&G was not idle in its defense efforts. On March 5, 2018, it filed a notice of appeal of the Court's order denying its motion to dismiss. SCE&G accompanied its notice of appeal with a letter informing Class counsel of its position that all discovery and other proceedings were stayed pursuant to its notice. On March 6, 2018, Class counsel responded that there was no automatic stay as to discovery and they were moving to dismiss SCE&G's appeal. On March 7, 2018, SCE&G filed a motion to enforce a stay. On March 8, 2018, the South Carolina Court of Appeals dismissed SCE&G's interlocutory appeal. SCE&G refused to accept that ruling and petitioned for rehearing. Class counsel filed a return to SCE&G's petition the next day. Ultimately, SCE&G's effort was quashed on May 29, 2018 when the Court of Appeals issued its remittitur on SCE&G's notice of appeal and request for rehearing. During the interim, this Court found there was no stay, and, at the very least, no stay as to every part of the case.

As SCE&G fought against the Court's February decision denying its motion to dismiss, the cases were proceeding on numerous fronts. On March 15, 2018, SCE&G served initial discovery on the lead class representatives. On March 30, 2018, more than six months after Plaintiffs had filed their complaints and served initial discovery, SCE&G finally responded to discovery, although it produced no documents. On the same date, SCE&G answered Plaintiffs' complaints.

Class counsel spent much time preparing for their argument on the all-important constitutionality of the BLRA. They met with constitutional and utilities experts, studied the applicable statutes and background of nuclear power generation, reviewed a decade

of SCE&G's PSC filings under the BLRA, and analyzed precedent. They were also busy pursuing discovery. On April 4, 2018, they re-noticed the deposition of a critical witness, Carlette Walker, for a third time after the first two attempts to depose her had been postponed.

On April 13, 2018, Plaintiffs filed their motion for partial summary judgment as to the constitutionality of the BLRA. The Court held a hearing on this motion on April 30, 2018. SCE&G brought in counsel from Washington, DC to make its argument. Having mastered the intricacies of the BLRA, Class counsel fortified their position by relying in part on a unique argument based on the South Carolina Constitution. Following argument, SCE&G's counsel suggested a potential need for further briefing and discovery to address Class counsel's use of its PSC filings.

During the April 13, 2018 hearing, the Court also heard argument on Plaintiffs' motion for class certification. Rather than address the merits of class certification, SCE&G attacked Class counsel, claiming they were conflicted and therefore not competent to represent SCE&G customers. SCE&G fought class certification vigorously, knowing that it was a key to the case, for no individual customer could afford a lawsuit against SCE&G.[4]

On May 7, 2018, the ORS moved to intervene in the state court litigation. Three days later, SCE&G again requested additional time to further brief the constitutionality issues which the Court permitted. On May 30, 2018, Plaintiffs made their litigation

[4] As the respected Federal appellate judge, Richard Posner, colorfully remarked about an analogous situation, "[t]he realistic alternative to a class action is not [numerous] individual suits, but zero individual suits, as only a lunatic or a fanatic sues for [a small amount]." Carnegie v. Household Int'l, Inc., 326 F.3d 656, 661 (7th Cir. 2004). (emphasis in original)

cooperation official by filing a consolidated complaint for Lightsey, Cleckley, and Goodman under the Lightsey caption in Hampton County.

On May 31, 2018, nearly ten months after Plaintiffs had filed their initial complaints, SCE&G finally began to produce documents. By this time, the class was in hot pursuit of depositions of important witnesses, including SCE&G executives Steve Byrne, Jimmy Addison and Kevin Marsh. SCE&G's lawyers resisted this discovery and fought to keep highly damaging documents secret.

Despite SCE&G's assault on the case and fierce resistance to Plaintiffs' efforts to uncover the facts, Class counsel marched forward vigorously with their litigation plan. To maximize the pressure on SCE&G, they had launched yet another front with a Racketeer Influenced and Corrupt Organization Act ("RICO") action in federal court.[5] Glibowski v. SCANA Corp., et al., 18-CV-00273-TLW (D.S.C. Jan. 31, 2018). Class counsel were now working on their own class actions, assisting the ORS with its PSC preparation, and confronting SCE&G in federal court with the RICO action.

H. Plaintiffs' Efforts Uncovered Crucial Evidence

Class counsel worked tirelessly to uncover the real cause of the nuclear plant project's failure. They followed leads, interviewed tipsters, and eventually came upon crucial witnesses willing to tell the truth. These witnesses revealed not only the depths of what SCE&G knew regarding the project, but also how SCE&G's knowledge differed from its public representations. Class counsel's efforts revealed that alarms had been raised

[5] This coordinated effort involved some of the original Class counsel, as well as additional counsel experienced in RICO actions. Because these additional lawyers' efforts assisted in the overall class effort, and the class settlement also settled the Lightsey class RICO claims against SCE&G, Class counsel agreed to include the RICO counsel as additional Class counsel for the purpose of final approval and the fee petition. The Proposed Order that will be submitted before the May 14, 2019 hearing will provide for giving RICO counsel status as Class counsel.

about the viability of the project years before the public announcement of its demise. Likewise, red flags had been flying over the engineering and construction decisions almost from inception of the project, and well before public disclosure of the unstamped plans, cost overruns, useless equipment, ill-fitting parts, and waste.

One of the most important whistleblowers Class counsel found was Carlette Walker, SCE&G's former head of nuclear finance. Plaintiffs began her deposition on April 24, 2018 after it had been postponed when she became seriously ill. Ms. Walker provided devastating testimony that SCE&G forced her to file false sworn testimony at the PSC on the project's cost and schedule. Following the deposition, SCE&G designated Ms. Walker's entire deposition as confidential and withheld significant portions of her documents from production as privileged. It also filed a motion for protective order concerning Plaintiffs' subpoena to third-party project auditor Bechtel Power Corporation. Class counsel attacked these defense tactics forcefully.

On July 25, 2018, the Court heard numerous motions, including Plaintiffs' motion to compel production of Carlette Walker's "privileged" documents and the parties' dueling motions regarding Bechtel's documents. At that hearing, Class counsel showed the Court numerous examples from SCE&G's privilege log where it had designated a document as privileged but still produced the document. Plaintiffs demonstrated that Defendant's assertions of privilege were unfounded, calling into question the remaining designations. Class counsel argued the Court should appoint a special master to review the documents SCE&G had designated as privileged. SCE&G opposed this request, instead producing a second privilege log it claimed corrected the abuses Class counsel had identified in the

first log. Over SCE&G's continued objections, the Court subsequently ordered SCE&G to produce the Carlette Walker documents to a special master for review.

SCE&G's attempt to shield the Bechtel documents from disclosure failed when communications between it and Santee Cooper made clear Bechtel was not hired for the purposes of litigation. Before the Court could rule, SCE&G conceded the Bechtel documents were not privileged.

Because of the willingness of Class counsel to assist the ORS, these victories in state court also became crucial victories for the ORS in its case before the PSC. But, like virtually everything in the case, this victory had required enormous effort to uncover this long-secret information.

While these various motions, arguments and hearings were proceeding, Class counsel pressed ahead with depositions. This process proved laborious. Scheduling was difficult due to the numerous parties attending the depositions, including counsel for the Plaintiffs, the ORS, SCE&G, Santee Cooper, the electric cooperatives, and independent defense counsel. Class counsel traveled to several states for these depositions. They worked tirelessly to take 20 depositions from August 27 through November 7, prompted by the impending PSC hearing which began on November 1, 2018. Class counsel knew the ORS needed the information these witnesses had.

Having first refused to produce any documents, SCE&G then began a rolling production of approximately 1.8 million pages of documents. Given the short timeframe for depositions, Class counsel had to create a computerized platform to effectively process, review, and manage this mass of documents quickly and efficiently. Once valuable documents were identified, Class counsel shared them with the ORS. Many of

the documents the ORS received from Plaintiffs' discovery efforts became primary exhibits it used in the PSC hearing.

While Class counsel continued to uncover damaging information, they also became aware of another potential hurdle to recovery – a possible SC&EG bankruptcy. Class counsel mobilized to find out what steps SCE&G was taking in that regard, including its rumored hiring of bankruptcy counsel. They began planning to position the class as strongly as possible in any potential bankruptcy.

I. As The Court Prepared To Rule On The BLRA And The PSC Hearing Approached, SCE&G Considered A Negotiated Resolution

On October 5, 2018, the Court indicated it planned to rule in the near future on Plaintiffs' motion for partial summary judgement on the constitutionality of the BLRA. Rather than face a possible adverse ruling, SCE&G sought to begin serious settlement discussions. In addition, the PSC proceedings were scheduled to begin on November 1, 2018, when the ORS would be presenting the significant evidence of SCE&G's liability assembled with Plaintiffs' assistance. This placed additional pressure on SCE&G to seek a comprehensive solution to the V.C. Summer plant morass.

During October and November 2018, representatives from the two sides met repeatedly to explore the possibility of resolution. While early settlement discussions were ongoing, Class counsel kept pressure on SCE&G by serving subpoenas on third party contractors and noticing resumed depositions of Stephen Byrnes, Jimmy Addison, Kevin Marsh and James Bennett, the chairman of SCE&G's compensation committee. On November 13, 2018, Plaintiffs noticed the deposition of Kyle Young, an important member of the SCE&G construction team overseeing the project. On November 20, 2018, Plaintiffs served their third consolidated discovery requests upon SCE&G.

Class counsel knew that any resolution of the class action would have to take place in concert with the PSC proceedings, for while the PSC had no authority to order refunds for past amounts paid, it was the logical authority to implement future relief. Any comprehensive solution for customers required both types of relief. Class counsel's cooperative relationship with the ORS not only assisted ORS in its regulatory presentation, but provided a helpful avenue for dialogue on how the class relief demand should be fashioned.

J. Protracted Settlement Negotiations Required Judicial Assistance

The initial weeks of negotiations were not fruitful. The parties were very far apart on their evaluation of the case. Seeing little hope for unsupervised negotiations, the parties agreed to enlist the aid of a respected neutral, the Honorable Joseph F. Anderson, Senior United States District Court Judge. Judge Anderson provided valuable insight and analysis to both sides regarding the strengths and weaknesses of the parties' positions.

The negotiations supervised by Judge Anderson were contentious, breaking down when SCE&G deemed the class demands unworkable. Talks resumed when counsel on both sides looked in good faith for creative ways to address seemingly intractable issues. After numerous discussions and internal analysis of their litigation position and the necessary interaction with the PSC proceedings, Class counsel ultimately agreed to seek approval from the Court for a settlement consisting of both retroactive relief and, in conjunction with the PSC proceedings, future rate relief.

The $2.2 billion settlement provides for a cash payment of $115 million, the transfer of real estate to the class with an estimated value between $60 and $85 million, and up

to $2 billion in rate relief to be administered through the PSC.[6] The total benefit conferred on the class is estimated to be between $2.175 and $2.2 billion, depending on the ultimate monetization value of the transferred property.

The cash payments and relief against future rate increases associated with the V.C. Summer project were a significant victory for the class in light of the failure of private utility customers elsewhere to succeed with similar claims. Since the amount the plaintiff class had spent for the past nuclear charges was approximately $2 billion, Class counsel regarded this settlement as a significant victory for the class. Importantly, it avoided an SCE&G bankruptcy that could have resulted in even higher electric rates.

On November 28, 2018, the parties executed their comprehensive settlement agreement. Class counsel received preliminary settlement approval from the Court on December 5, 2018. On December 21, 2018, the PSC issued its ruling implementing the future relief the class helped secure, and approving a sale of SCE&G to Dominion Energy, Inc.

K. Following Preliminary Settlement Approval, Class Counsel Notified The Class About Its Terms And Their Potential Fee Request

The Court's preliminary settlement approval order permitted Class members to be notified of the settlement. The notice specifically informed the class that Class counsel would request up to five percent of the total Class benefit, including the cash, real estate

[6] The $2 billion is a portion of the present value dollar amount that SCE&G has applied with PSC approval to reduce future rates by removing certain costs from its rate base and providing customer credits to reduce their bills. Over time, the value to the customers will be more than $2 billion because they will not be paying financing costs on the $2 billion removed from SCE&G's rate base. See Affidavit of John Alphin, ¶ 9-11. Attach. 2.

value, and future rate relief. Class Notice, ¶ A.5. The current fee request of three percent of the total benefits conferred is significantly below that figure.

L. Following Final Approval, Class Counsel Have Significant Additional Work To Do

Following final approval, if granted by the Court, Class counsel still have substantial work to do. Not only must counsel administer the monetary payments to class members, but they must also market the SCE&G property transferred to the class and convert that property into additional cash. Class counsel intend to maximize the sales price of the property but, like the class, are subject to the vicissitudes of the real estate market. Should the property ultimately turn out to produce less than the $60 - $85 million that counsel estimate it to be worth, counsel's fee on the overall benefit, which depends in part on the transferred property value, will be correspondingly reduced.[7] Accordingly, Class counsel have an incentive to maximize the property value.

Class counsel will not seek any additional fee for their work in administering the class following final approval beyond the three percent of the total benefit as discussed above.[8] In addition, in order to align their interests with those of the Class, Class counsel will not take any fee on the transferred property's value until each parcel is sold.

---

[7] As an example, if the property turns out to be worth $60 million, the total settlement benefit would be $2.175 billion consisting of $2 billion in rate relief, $115 million in cash and $60 million in property value. The corresponding three percent class fee would be $65,250,000 instead of $66 million.

[8] The Proposed Order will, however, permit Class counsel to charge the common fund for future expenses incurred in administering the fund and monetizing the real property. An allowance for future expenses is common in fee approval orders. See e.g., Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279, slip op. at 8 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008), Attach. 12; Mitchum v. Aiken Electric Corp., No. 2014-CP-02-288 (Aiken Cty. Ct. Com. Pl. June 30, 2015).

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

A. Legal Standard

Under the "American Rule," litigants are responsible for their own attorneys' fees. See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975). There are, however, exceptions to this rule. Pertinent to this case is a court's equitable power to award attorneys' fees from a "common fund." See Boeing Co. v. Van Gemert, 444 U.S. 472, 479 (1980) (discussing equitable power of court to award attorneys' fees in common fund cases); Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 164 (1939) (explaining attorneys' fee award from the fund generated is within "the historic equity jurisdiction of the federal courts"); Alyeska Pipeline Servs., 421 U.S. at 257 ("historic power of equity" permits recovery of attorneys' fees from fund).

The United States Supreme Court has long recognized that equity will not force a successful representative litigant to bear the costs of litigation while others reap the rewards. See Trustees v. Greenough, 105 U.S. 527, 535-36 (1881); see also Sprague, 307 U.S. at 166. An attorney's right to receive a reasonable fee from a common fund was first recognized in Central R.R. & Banking of Georgia v. Pettus, 113 U.S. 116, 127-28 (1885). See also Camden I Condo. Ass'n v. Dunkle, 946 F.2d 768, 771 (11th Cir. 1991) (discussing historical method of computing attorneys' fees in common fund cases).

In Boeing Co. v. Van Gemert, 444 U.S. 472 (1980), the Supreme Court summarized the common fund doctrine:

> [T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. The common-fund doctrine reflects the traditional practice in courts of equity and it stands as a well-recognized exception to the general principle that

> requires every litigant to bear his own attorney's fees. The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.
>
> Id. at 478.
> (internal citations omitted)

There can be no doubt that these equitable principles apply here. The efforts of counsel have resulted in the creation of a settlement benefit of approximately $2.2 billion, consisting of $115 million in cash, an estimated $60 - $85 million in property value to be monetized, and $2 billion in rate relief to be administered through the PSC. Accordingly, Class counsel are entitled to a reasonable fee from the common benefit they have conferred.

B. The Accepted Way To Determine The Class Counsel Fee Is By A Percentage Of The Benefit Conferred

There are two methods of determining legal fees. One looks at the hours expended, the lodestar method. The other looks at the risks and efforts of counsel and awards a percentage-of-the-fund. The lodestar method involves multiplying the number of hours spent by the attorney's normal hourly rate to create a "lodestar" figure. This method is traditionally used where a lawyer is working for a paying client who understands that the time spent, rather than result achieved, is being compensated. The lodestar method is ill-suited to a class action common fund case, as numerous courts have recognized.

A major criticism of the lodestar method is its propensity to encourage inefficiency. Despite diligent review of billing records by the court, attorneys can potentially be rewarded for spending more time and billing at higher rates than they should. Moreover,

when hours expended are the primary basis for a fee award, Class counsel has no incentive to resolve a case until the desired hours are recorded. The fault with focusing on the number of hours spent by counsel was explained succinctly in Blank v. Talley Indus., 390 F. Supp. 1 (S.D.N.Y. 1975):

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

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

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

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

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

The percentage-of-the-fund method also more accurately reflects the economics of litigation practice and the legal market. See Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1269 (D.C. Cir. 1993) ("[A] percentage-of-the-fund approach more accurately

reflects the economics of litigation practice."). In Howes v. Atkins, 668 F. Supp. 1021, 1025 (E.D. Ky. 1987), the district court noted that "[p]laintiffs' litigation practice, given the uncertainties and hazards of litigation, must necessarily be result-oriented. It matters little to the class how much the attorney spends in time or money to reach a successful result." Id. at 1025 (internal quotation marks omitted). Making a similar point in In re Continental Illinois Sec. Litig., 962 F.2d 566 (7th Cir. 1992), Judge Richard Posner wrote:

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

A major blow to the lodestar method occurred in 1985 when the Third Circuit Court of Appeals appointed a task force to study the issue of court-awarded fees and compare the merits of the lodestar and percentage-of-the-fund approaches. The task force concluded the lodestar method was a "cumbersome, enervating, and often surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar." Court Awarded Attorney Fees, Report of the Third Circuit Task Force, 108 F.R.D. 237, 255 (1986). Its report enumerated the lodestar method's numerous deficiencies. These included: encouraging lawyers to spend excessive hours engaging in duplicative and unjustified work, inflating their 'normal' billing rates; including fictitious hours; and creating a disincentive for the early settlement of cases. Id. at 248.

For these reasons, the Task Force recommended abandoning the lodestar method in all common fund class actions. Id. at 255. It concluded that the percentage-of-the-fund method was the best way to achieve the goals of fair and reasonable compensation,

predictability, simplification, discouragement of abuses, and fairness to the parties in common fund cases. Id. at 255, 258. The vast majority of class action courts in the last 30 years have heeded this carefully considered conclusion and employed the percentage of the fund method. South Carolina state and federal courts have both adopted the percentage method for common fund cases.

C. The Percentage Of The Fund Method Has Been Widely Applied To Class Actions

1. Longstanding Federal Precedent Supports the Percentage Method

Because the federal class action rule has seen more application than its state counterpart, South Carolina courts find it useful to refer to federal authority for guidance. See Gardner v. Nusome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). The United States Supreme Court has consistently held it appropriate for a common fund fee to be determined on a percentage-of-the-fund basis. See, e.g., Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 165-66 (1939); Central R.R. & Banking Co. v. Pettus, 113 U.S. 116, 124-25 (1885); Trustees v. Greenough, 105 U.S. 527, 532-33 (1881). In Blum v. Stenson, 465 U.S. 886, 900 n.16 (1984), the Court recognized, "Under the common fund doctrine . . . a reasonable fee is based on the percentage of the fund bestowed on the class." Since Blum, numerous federal courts have endorsed the percentage-of-the-fund method.[9]

[9] See, e.g., Camden I, 946 F.2d at 774 ("After reviewing Blum, the Task Force Report, and the foregoing cases from other circuits, we believe that the percentage of the fund approach is the better reasoned in a common fund case."); In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295, 307 (1st Cir. 1995) (holding percentage-of-the-fund method may properly be used to calculate attorneys' fees in common fund cases); In re General Motors Corp. Pick-Up Truck Fuel-Tank Prods. Liab. Litig., 55 F.3d 768, 821-22 (3d Cir. 1995), cert. denied, 516 U.S. 824 (1995) (explaining that in common fund cases a district judge can award attorneys' fees as a percentage of the fund recovered); Rawlings v. Prudential-Bache Properties, Inc., 9 F.3d 513, 515-16 (6th Cir. 1993) (recognizing the recent trend toward

Federal courts in South Carolina have followed the overwhelming trend and applied the percentage-of-the-fund method. In Edmonds v. United States, 658 F. Supp. 1126 (D.S.C. 1987), Judge Sol Blatt Jr. agreed that the preferred method of computing fees in common fund cases is the percentage-of-the-fund method. The Court based its conclusion in part on the Supreme Court's statement in Blum that in common fund cases, "a reasonable fee is based on a percentage of the fund bestowed on the class." Id. at 1144 (quoting Blum, 465 U.S. at 900 n.16.) The Court noted that "no subsequent statements by the Supreme Court suggest any other approach." Id. Judge Blatt also found that "sound policy considerations support the use of percentage-based fees in common fund cases," specifically citing Class counsel's incentive to "push the settlement fund demanded to the limits." Id. 1145. See also Ward v. Dixie Nat'l Life Ins., C.A. No. 3:03-cv-03239-JFA (D.S.C. 2008) (same), Temp. Servs., Inc. v. Am. Int'l Group, Inc., 2012 WL 4061537, at *7-*9 (D.S.C. Sept. 14, 2012) (same).

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

Numerous South Carolina courts have determined that the percentage of the fund method is an appropriate method for awarding attorneys' fees in a common fund action. The South Carolina Supreme Court spoke specifically to this issue in Layman v. State,

---

adoption of a percentage-of-the-fund method in common fund cases); Montgomery v. Aetna Plywood, Inc., 231 F.3d 399, 408-09, 412 (7th Cir. 2000) (affirming attorneys' fee award based on a percentage of the settlement fund); Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990) (affirming award of attorneys' fees calculated by the percentage-of-the-recovery method); Gottlieb v. Barry, 43 F.3d 474, 487 (10th Cir. 1994) (authorizing percentage approach and holding that use of lodestar/multiplier method was abuse of discretion); Waters v. Int'l Precious Metals Corp., 190 F.3d 1291, 1294 (11th Cir. 1999) (applying rule that "attorneys' fees should be a reasonable percentage of the common fund created for the benefit of the class"); and Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C. Cir. 1993) (adopting the percentage-of-the-fund approach when determining attorneys' fees in common fund cases).

376 S.C. 434, 658 S.E.2d 320 (2008). In that case, the Court distinguished "fee shifting" cases, where the defendant pays the Plaintiffs' attorney's fees (and a lodestar method is appropriate), from "common fund" cases, where the fund pays the Plaintiffs' attorney who created it (and the percentage method is used):

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

Layman is consistent with earlier South Carolina authority such as Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003), where the Court upheld a percentage fee assessed against a common fund. These modern cases built upon long-standing South Carolina precedent allowing an attorney's fee to be paid from a common fund that the attorney's efforts helped create. See Petition of Crum, 196 S.C. 528, 14 S.E.2d 21, 23-24 (1941) (attorney who creates a common fund is entitled to a fee from the fund); Shillito v. City of Spartanburg, 214 S.C. 11, 33, 51 S.E.2d 95, 104 (1948) (same).

This Court in Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008), recognized that "the percentage of recovery method [is] the accepted way to analyze fees to be paid from a common fund." Slip op. at 3.[10]

[10] Attach. 12.

D. The Requested Fee Falls Well Within The Established Ranges For Similar Settlements

As controversies have become bigger and the damages larger, class action resolutions have followed suit. As a result, class action settlements tend now to be classified as either "traditional" settlements or "mega" settlements. While there is no clear dividing line, many courts regard most settlements under $200 million as "traditional," and those over $500 million as "mega." The $200 million to $500 million settlements fall in a transitional zone.

As with traditional class action settlements, courts have developed rough parameters for class action fees in mega class settlements. The current settlement of roughly $2.2 billion qualifies as a "mega" class settlement. Alternatively, if the $2 billion in rate relief were disregarded for the purposes of discussion, the $115 billion cash and $60-85 million estimated property value (total $175 - $200 million) would be considered a traditional class settlement. As Class counsel show below, their fee request is well within the accepted range for either a "mega" or "traditional" settlement.

1. The Requested Three Percent Fee on the Total Class Benefit is Well Below the Accepted Mega Settlement Fee Range

There is no question that the $2 billion in rate relief was an integral part of the class action settlement, as the settlement agreement itself recognizes:

> As consideration for the Release and Discharge as set forth below, defendants will fund the class disbursement by tendering cash, the real estate or net proceeds identified in Exhibit A, and up to two billion dollars ($2,000,000,000.00), less the credits set forth in Section 2.a to an escrow account bearing interest at the three-month CD rate.
>
> Settlement Agreement, ¶ 2.

The settlement agreement then provides that because the PSC is the appropriate body to administer rate relief, the $2 billion would be credited against the settlement, with the money used for rate relief under the auspices of the PSC:

> As an express term of this settlement, the Parties agree that Defendants will receive a credit of up to two billion dollars ($2,000,000,000.00) toward their Settlement obligation in the amount of rate relief to inure to the benefit of the Class Members over a period of time established in the contemporaneous proceeding pending before the PSC. It is expressly agreed by the Parties that the benefit conferred in the PSC was provided as a direct result of this Litigation.
>
> Settlement Agreement, ¶ 2a.
> (emphasis added)

With the $2 billion recognized as an integral part of SCE&G's "settlement obligation," this settlement easily qualifies as a mega settlement. While each mega case settlement is different, there are guideposts to inform the decision on a fee request in such a case. The available data fully support a three percent fee request as eminently reasonable.

Perhaps the most well-known of the mega-case settlements was the $250 billion nationwide tobacco settlement.[11] In those cases, a three-person arbitration panel evaluated the performance of counsel in the various state actions settled and awarded an appropriate percentage.[12] In the Florida state case, which received a $13.2 billion recovery, the panel awarded a 26% fee ($3.4 billion). Florida v. Am. Tobacco Co., No. CL-95-1466-AH (Palm Beach Co. Cir. Ct.). In the Mississippi state case, the panel awarded 34% of the state's $4.1 billion recovery ($1.43 billion). Moore v. Am. Tobacco

[11] Although not class actions, these mega cases had attorneys' fees awarded by an arbitration panel that considered many of the same factors as class action courts.

[12] One of Class counsel here (Westbrook) was involved in several of the state tobacco cases and was lead national trial counsel in one of them (Oklahoma).

Co., No. 94-1429 (Miss. Ch. Ct.). Other awards in the remaining mega settlement state cases were similarly higher than the three percent Class counsel seeks here.

Courts that have reviewed megafund awards in other contexts have noted that, as the settlement amount increases, the fee percentage generally decreases, although a three percent fee is still very modest compared to other mega-settlement fees. For instance, in In re Black Farmers Discrimination Litig., 953 F. Supp.2d 82, 98 (D.D.C. 2013), the Court noted that where a mega-class recovery exceeds $1 billion, courts have approved fees in the five to ten percent range. In Ramah Navajo Chapter v. Jewell, 167 F. Supp. 3d 1217 (D.N.M. 2016), the Court recognized a higher general range "between 10% and 15%" while awarding 8.5%. Id. at 1243. That finding was mirrored in Shaw v. Toshiba Am. Info. Sys., Inc., 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) where the Court concluded that megafund awards of 15% were "common." See also, In re NASDAQ Mkt. -Makers Antitrust Litig., 187 F.R.D. 465, 485-88 (S.D.N.Y. 1998) (awarding 14% of a $1 billion fund); Wal-Mart Stores, Inc. v. Visa U.S.A, Inc., 396 F.3d 96, 106 (2nd Cir. 2005) (affirming a 6.5% fee on a $3.4 billion settlement).

In one of the most recent mega-case fee awards, the Court approved a 13% fee on a $2.3 billion settlement. In re Foreign Exch. Benchmark Rates Antitrust Litig., 2018 WL 5839691, at *1 (S.D.N.Y. Nov. 8, 2018)[13]; see also, In re Enron Corp. Sec. Derivative & ERISA Litig., 586 F. Supp. 2d 732, 827-28 (S.D. Tex. 2008) (9.5% fee on a $7.2 billion common fund); Shaw v. Toshiba Am. Info. Sys., Inc., 91 F. Supp. 2d 942, 973 (E.D. Tex.

[13] One objector has recently challenged the 13% fee on the grounds that a government investigation had already resulted in guilty pleas by the Defendants and most of the common fund was accumulated without risk of non-recovery. That objector urged the appeals court to recognize that megafund fee awards average 6.7%. In re Foreign Exch. Benchmark Rates Antitrust Litig., 2019 WL 1499432 (2nd Cir. April 2, 2019). Here, there was no pre-existing government investigation, there was continuing risk, and the requested three percent fee is well below the objector's 6.7% average mega-fund fee.

2000) (7% fee on $2.1 billion settlement); In re Diet Drugs Litig., 553 F. Supp. 2d 442, 485 (E.D. Pa. 2008) (6.75% fee on a $6.4 billion settlement). Indeed, some courts have pushed back on the notion that mega settlement fees should be a lower percentage than traditional class settlement fees. See e.g., In re Urethane Antitrust Litig., 2016 WL 4060156, at *1, *8 (D. Kan. July 29, 2016) (awarding a one-third fee on $835 million settlement); Allapattah Servs. v. Exxon Corp., 454 F. Supp. 2d 1185, 1239-40 (S.D. Fla. 2006) (31.33% fee on a $1.075 billion settlement).

Importantly, many of these mega class settlement cases involved mature areas of the law (antitrust, securities, drug product liability), where the cases were complex, but the applicable law was established. Here, Plaintiffs dealt with both the complex facts surrounding the V.C. Summer project collapse, and a groundbreaking area of the law involving the unchartered waters of the BLRA. When this additional factor of legal novelty is considered, the settlement achieved here is even more remarkable.

It is undisputable that the $2 billion in rate relief was secured and made enforceable by the class settlement. Thus, a fee computed on a class benefit that includes that rate relief is clearly appropriate. But it is also instructive to consider that even without considering the $2 billion rate relief, a traditional class action fee computed on the cash and transferred property value would still be within the parameters of an appropriate fee.

2. Judicial Consensus Supports a 33.33% Fee in a Non-Mega Class Settlement

As with mega settlement fees, there is no steadfast rule to determine the reasonable percentage of a traditional common fund to award as a fee. Rather, the amount of any fee must be determined by the facts of each case. A review of the cases applying the percentage-of-the-fund method to non-mega settlements give significant

guidance. Due to their greater frequency, federal class actions provide the broadest data on accepted common fund fee percentages. One representative opinion that surveyed the law extensively concluded:

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

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

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

3. Recent South Carolina State and Federal Class Actions Follow the Consensus and Find Fees in the Range of 33.33% or More to Be Appropriate

Recent South Carolina common fund cases have followed the consensus and awarded fees at or above 33.33%. In Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008), this Court noted that the customary South Carolina fee for a complex contingent fee case "ranges from one-third to one-half of the gross recovery." Slip op. at 7.[14] It ultimately awarded a one-third contingent fee on a $57 million recovery, finding:

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

The Court noted that this fee was at the lower end of the range of contingent fees approved in South Carolina courts. Id. Indeed, a higher percentage was approved by the Court in Fairey v. Exxon Corp., C.A. No. 94-CP-38-118 (Orangeburg Cty. Ct. Com. Pl. Oct. 9, 2003) (40% of a $30 million recovery).

Other South Carolina opinions agree that a one-third fee is within the range of appropriate fees. In Edwards v. SunCom, 2008 WL 4897935 (S.C. Ct. Com. Pl. May 5, 2008), the circuit court awarded fees of one-third of the fund, plus costs. Similar percentage fees were awarded in other class action cases, Lackey v. Green Tree Fin. Corp., C.A. No. 96-CP-06-073 (S.C. Ct. Com. Pl. July 24, 2000) (one-third fee award); Bazzle v. Green Tree Fin. Corp., C.A. No. 97-CP-18-258 (S.C. Ct. Com. Pl. July 24, 2000)

[14] Attach. 12.

(one-third fee award).[15] More recently, in a Charleston circuit court case, Judge Newman granted a one-third contingent fee in a condominium construction defect class action. O'Donnell v. Northland Madison at Park West, LLC, C.A. No. 2010-CP-10-9095, slip op. at 1-2 (Charleston Cty. Ct. Com. Pl. April 15, 2015).

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

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

Id. at *3; Ward v. Dixie Nat'l Life Ins., C.A. No. 3:03-cv-03239-JFA, slip op. at 2 (D.S.C. Dec. 15, 2008); see also, Temp. Servs., Inc. v. Am. Intern. Group, Inc., 2012 WL 4061537, at *8 (D.S.C. Sept. 14, 2012) (33 ⅓% fee). In DeWitt v. Darlington Cty., S.C., 2013 WL 6408371, at *9 (D.S.C. Dec. 6, 2013), Judge Harwell took note of a survey of common fund cases throughout the country with a fee range of 19-45%, and awarded Class counsel the one-third fee requested.

The three percent fee requested here is approximately equivalent to a one-third fee calculated on the cash and monetized property value.[16] Thus, even if the $2 billion

---

[15] Professor John Freeman, a fee expert in this case, testified in both the Lackey and Bazzle cases and filed an affidavit in Fairey. Freeman Affidavit, ¶ 48. Attach. 6.

[16] The $66 million fee produced by three percent of the $2.2 billion settlement is 33% of the total value of the cash and property at the high end of the estimated property value ($115 million + $85 million = $200 million; $66 million /$200 million = 33%). At the low end of the property value ($115 million + $60 million = $175 million), the total settlement would be $2,175 billion. Three percent of that amount is $65.25 million, which is 37.3% of the cash and property value ($65.25 million/$175 million = 37.3%). This is still well within the 19-45% range of fees noted by this Court in Anderson Memorial Hosp. ("most fees appear to fall in the range of nineteen to forty-five percent of the settlement fund to be fair and reasonable.") Slip op. at 3. Attach. 12.

in rate relief were not a primary element of the settlement, which it was, the requested fee would be justified on the basis of the cash and property value alone.

E. Counsel's Extraordinary Achievement Supports A Three Percent Fee As A Minimum

As the cases make clear, the determination of an appropriate fee percentage in any class action is "somewhat elastic and depends largely on the facts of a given case." In re Ikon Office Solutions, Inc. Securities Litig., 194 F.R.D. 166, 193 (E.D. Pa. 2000). Recognizing that a three percent fee is well within the range of mega-settlement fees, it is useful to briefly review some factors that show such a fee to be a minimum here. In doing so, it is important to realize which factors are paramount in a common fund case. For example, "time and labor required" is a primary consideration to determine a reasonable fee in a fee shifting case. Layman v. State, 376 S.C. 434, 452, 658 S.E.2d 320, 330 (2008). But, in a common fund case, "the amount involved and the results obtained may be given greater weight when the recovery was highly contingent and [ ] the efforts of counsel were instrumental in realizing the recovery." See Brown v. Phillips Petroleum Co., 838 F.2d 451, 456 (10th Cir. 1988). Here Class counsel worked on a highly contingent case where recovery was only achieved through enormously creative effort.

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

1. The nature, extent, and difficulty of the case;
2. The time necessarily devoted to the case;
3. The professional standing of counsel;

4. The contingency of compensation;

5. The beneficial results obtained; and

6. The customary legal fee for similar services.

Each of these factors supports the view that a three percent fee here is extremely reasonable.

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

As the previous discussion has indicated, this case was a cutting-edge effort to address a novel injury using a creative legal theory. There was no "roadmap" as there is with many typical class actions in the securities, antitrust, employment, and products liability fields. Similar challenges to nuclear project abandonment costs elsewhere had already foundered on a finding of no available claim by disappointed customers.

For example, in Newton v. Duke Energy Florida, LLC, No. 16-cv-60341-wpd (S.D. Fla. 2016), Florida customers had advanced $2 billion in electric bills to fund defunct nuclear projects. The Florida Legislature had passed an act similar to the BLRA that allowed utility companies to collect construction costs before the plants were completed. Id. Customers challenged the legislative scheme as unconstitutional and attacked other aspects of the legislative scheme. Id. The Court dismissed the constitutional challenges and declined supplemental jurisdiction over the state law claims.[17] Id. As a result, those Florida customers received nothing.

Class counsel deftly avoided that contrary authority by attacking the validity of the BLRA under the South Carolina Constitution. In making this argument, counsel crafted novel theories of due process within the scope of South Carolina jurisprudence. They

[17] Attach. 11.

also worked tirelessly to uncover "whistleblowers" whose testimony cried out for a customer remedy. Chief among these was Carlette Walker whose testimony struck at the heart of SCE&G's business judgment defense. Class counsel learned of her through their FOIA request to Santee Cooper that produced a revealing voicemail Ms. Walker had left for a Santee Cooper executive. Ms. Walker, who was SCE&G's former head of nuclear finance, testified that she had raised alarms about the project, but had been ignored as SCE&G continued to be publicly bullish on the project.

Class counsel also secured the testimony of Kenneth Browne, a SCE&G senior engineer, who exposed the deficiencies in SCE&G's supervision of the nuclear plant contractor. He testified that the bombshell revelations in the Bechtel Report were not news to him or many on the project, for they knew it was being mismanaged:

> But everybody wants to draw attention to the Bechtel Study. There were people on the project who knew everything that was in the Bechtel Study before Bechtel ever showed up on site.
>
> Kenneth Browne Dep. 64:19-23, Sept. 25, 2018.

Likewise, Ronald Jones, SCE&G's Vice President of New Nuclear Operations, colorfully described Bechtel's work as nothing new, remarking that "they came in and circled the bullet holes." Ronald Alan Jones Dep. 206:25-207:1, Oct. 16, 2018.

Other deponents provided evidence that SCE&G knowingly provided false financial projections to the PSC to keep the project's problems concealed (Sheri Wicker); that SCE&G knew its V.C. Summer cost projections and time lines were flawed (Margaret Felkel, Terry Elam); that SCE&G's handling and scrubbing of the Bechtel Report was designed to protect SCE&G's management role (Ty Troutman, George Wenick); and that SCE&G withheld information from the ORS including the Bechtel Report (Allyn Powell

and Dukes Scott). In all, Class counsel attended 27 depositions, taking the lead on most and assisting the ORS which followed up on Plaintiffs' questioning. The depositions were defended by 42 different defense counsel for various parties.

But none of the explosive discovery Class counsel secured would have been of any use if they did not have strong legal theories to pursue. Class counsel had to withstand the onslaught of the comprehensive motions to dismiss SCE&G filed attacking every aspect of the case. The docket sheets of the three class actions reflect 449 total entries. The RICO cases added 172 more entries.

SCE&G's counsel did a magnificent job raising every conceivable defense and pursuing each vigorously. Its lawyers, who hail from the most prestigious South Carolina firms and a highly respected Atlanta firm, did an outstanding job in defense of their client. This excellent defense effort demanded the highest level of skill by Class counsel. As Federal Judge Michelle Childs recently recognized in approving a 39% Class counsel fee: "[A]dditional skill is required when the opponent is a sophisticated corporation with sophisticated counsel." Savani v. VRS Prof. Solutions, LLC, 121 F. Supp. 3d 564, 571 (D.S.C. 2015) (quoting Smith v. Krispy Kreme Doughnut Corp., 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007)). That statement is equally applicable here.

The most objective evaluation of a case's difficulty is its contemporaneous assessment by expert litigators at inception. As class action courts have noted, "[r]isk of litigation should be considered as of when the case is filed." In re Foreign Exch. Benchmark Rates Litig., 2018 WL 5839691, at *3 (S.D.N.Y. Nov. 8, 2018) (internal quotations removed). Unlike many mega-class actions, such as securities or antitrust, where the prospect of litigation invites intense competition to be part of the "action," only

a select group of attorneys was willing to get involved in this novel case. Indeed, one of the most respected class action lawyers in South Carolina, the Honorable Richard A. Harpootlian, evaluated this litigation at its outset and declined to become involved. Mr. Harpootlian, who has recovered many millions of dollars for class action clients in South Carolina cases, believed the case presented too many obstacles to justify investing his time and effort. As Mr. Harpootlian stated:

> After analyzing the situation and evaluating the prospect for ratepayer recovery, I declined to become involved in the litigation because I believed the prospect of success was remote.[18]

In addition, not one law firm sought to be added to Class counsel's group after the cases began. Clearly there was no widespread belief among South Carolina attorneys that the cases could be successfully prosecuted. Undaunted, Class counsel put their heads down and worked diligently to bring the case to a successful conclusion.

2. Time Necessarily Devoted to These Cases

As this brief makes clear, Class counsel are not applying for a fee based on the hours they spent on the case. Counsel are here because of their success. They seek an award because of the efficiency with which they resolved the case, while avoiding the plodding that lawyers whose fee depends on hours could be tempted to do. The Court in Shaw v. Toshiba Am. Info., 91 F. Supp. 2d 942, 964 (E.D. Tex. 2000), spoke to this negative motivation directly:

> Simply put, the lodestar method encourages class-action attorneys to drag their feet to the detriment of their respective classes.

[18] Affidavit of Richard A. Harpootlian, ¶ 7. Attach. 8.

Likewise, a federal appellate court judge exposed the error that a focus on hours injects into evaluation of an attorney's effort:

> The hourly rate approach ... frequently [bears] little or no relationship to the value of the services performed in anything but the most routine work. A flash of brilliance by a trial lawyer may be worth far more to his clients than hours or days of plodding effort.
>
> Foster v. Boise-Cascade, Inc.,
> 577 F. 2d 335, 337 n.1 (5th Cir. 1978).

As the Toshiba court starkly recognized, "the lodestar method rewards plodding mediocrity and penalizes expedient success." 91 F. Supp. 2d at 964.

While hours spent are not the basis of this fee petition, the case could not have been resolved without the work of expert lawyers which necessarily involves time. The efficient use of time by Class counsel is one of the important factors in their success.

Prosecution of these cases required a dedicated commitment of time and resources from Class counsel on a priority, expedited basis. Unlike some class actions, which proceed for many years at a leisurely pace, this was a dynamic effort from the outset. The myriad of issues, extensive discovery, and unique interaction with the PSC proceedings required an efficient, coordinated effort on behalf of Class counsel. The thirteen law firms involved organized themselves under the direction of lead counsel and divided their efforts among the various aspects of the case. This ensured efficiency, avoided duplication of effort, and allowed the class to stand toe-to-toe with the excellent lawyers representing one of the largest corporations in South Carolina.

At the outset, Class counsel recognized their effort must be intense, focused, and directed toward as quick a resolution of this litigation and the PSC proceedings as possible in order to reduce the overall damage to the customers. For unlike many complex cases where all the damage has been done, the potential future class losses

here were significant. As noted previously, the day after announcing the project's abandonment, SCE&G filed a PSC petition to have the project costs added to its future rate base. The next day, August 2, 2017, SCE&G's CEO, Kevin Marsh, smugly decreed that customers were out of luck:

> The project-related costs already reflected in customers' bills were prudently incurred and approved by the PSC and will not be refunded.[19]

Working efficiently, Class counsel pursued the case vigorously from initial filing, when SCE&G argued it had absolutely no merit, through discovery and motions until SCE&G realized it had to deal with the class to resolve this debacle.

Unlike some class actions that "piggyback" on government antitrust or securities investigations, Class counsel were out in front of any government action, and actually aided the government (ORS) in its efforts at the PSC. Courts have recognized the added value Class counsel contribute when they are blazing a trail without a prior government action to "soften up" a defendant. See e.g., In re Urethane Antitrust Litig., 2016 WL 4060156, at *4 (D. Kan. July 29, 2016) (noting that the case was resolved "without the benefit of a government investigation or prosecution of members of the alleged antitrust conspiracy."). Here, SCE&G had enjoyed years of unchallenged rate increases related to the V.C. Summer construction. It took Class counsel to step up and say "no more" to change the nuclear rate landscape.

Class counsel spent significant time and effort to assist the efforts of the ORS at the PSC. In the class settlement agreement, SCE&G expressly acknowledged the

[19] Email from Richard Kizer (Santee Cooper) enclosing Kevin Marsh (SCE&G) note to employees (Aug. 2, 2017). Attach. 3.

valuable assistance Class counsel provided in achieving the rate relief to be administered through the PSC:

> Whereas, the Parties acknowledge and understand that this settlement agreement encompasses and impacts the terms of matters pending before the PSC. The parties agree and acknowledge that Class Counsel, by and through their efforts in the Litigation, and assistance in the discovery process, have provided significant benefit to the PSC proceeding.
>
> Settlement Agreement, at ¶ 3-4.

SCE&G's acknowledgement was verified by ORS outside counsel who were brought in to aid its in-house staff. Counsel for the ORS realized the overwhelming task facing them and gladly welcomed Class counsel's help. In a comprehensive affidavit, ORS counsel, Wallace K. Lightsey, has praised the numerous ways that Class counsel provided critical assistance, including the following:

- "Class Counsel assisted by helping us identify and access key witnesses and learn the fundamental facts of this case."[20]
- "Over the next five months, Class Counsel provided updated trial strategy work product. In many ways, this work product served as an indispensable resource in our litigation at the PSC. This is evidenced by our use of this information in numerous depositions and witness testimony, as well as the filing of underlying and support materials at the PSC."[21]
- "Class Counsel agreed to execute their proposed discovery and deposition plan to ensure ORS met its compressed timeline."[22]
- "Additionally, we were often in daily contact with Class Counsel as litigation progressed. Through the course of these communications, Class Counsel would provide continuous updates on discovery, their theory of the case, and other pertinent developments."[23]

[20] Affidavit of Wallace K. Lightsey, ¶ 3. Attach. 9.

[21] Lightsey Affidavit, ¶ 4. Attach. 9.

[22] Lightsey Affidavit, ¶ 5. Attach. 9.

[23] Lightsey Affidavit, ¶ 5. Attach. 9.

- "Document discovery in the litigation was on a mammoth scale. Class Counsel took a lead role that ... was of enormous assistance to us, as it would have been virtually impossible to do a thorough job of this review on our own given the compressed time frame and the enormous volume of documents."[24]

- "Class Counsel assisted us with document discovery, which saved not only litigation costs, but also hundreds, if not thousands, of hours of work and allowed us to streamline discovery and focus our case."[25]

- "In addition, Class Counsel spearheaded many depositions after an early meeting in which they identified key witnesses ... Of these depositions, twelve were entered into evidence before the PSC, along with their supporting exhibits."[26]

- "Class Counsel's strategic insight and diligence throughout the discovery process supported ORS's case, which ultimately was adopted by the PSC."[27]

- "Both Mr. Browne and Ms. Walker became key witnesses for ORS based on the testimony elicited by Class Counsel during their depositions. There is no question that these two witnesses offered critical testimony for ORS's case, which was available because of Class Counsel's efforts."[28]

- "Our ability to be extensively prepared, as well as our ultimate success, was tied to Class Counsel's willingness to engage with and assist our efforts in advocating for the public interest and on behalf of SCE&G's customers."[29]

From providing key documents to taking the lead on critical liability depositions, Class counsel did all they could to ensure the ultimately favorable PSC decision on the

[24] Lightsey Affidavit, ¶ 6. Attach. 9.

[25] Lightsey Affidavit, ¶ 7. Attach. 9.

[26] Lightsey Affidavit, ¶ 8. Attach. 9.

[27] Lightsey Affidavit, ¶ 9. Attach. 9.

[28] Lightsey Affidavit, ¶ 9. Attach. 9.

[29] Lightsey Affidavit, ¶ 10. Attach. 9.

ORS petition. This effort culminated not only in the credit for rate relief the class helped negotiate, but a January 13, 2019 revised PSC ruling holding that SCE&G had intentionally misled the PSC.

Through their dogged discovery efforts, Class counsel were instrumental in preventing SCE&G from including $2.1 billion in its rate base for costs incurred after March 2015. This was the date when Class counsel's depositions of Carlette Walkers and Kenneth Browne established that SCE&G had provided false testimony to the PSC concerning the costs of the project. As part of the PSC resolution, SCE&G was required to absorb these costs and not charge customers financing costs on that amount. The ORS achieved this significant victory in the PSC proceedings using the fruits of Class counsel's discovery.

Class counsel's efforts were truly multi-faceted, involving not only the class action and the PSC proceedings, but also the RICO cases as an additional litigation front. Over the course of their fifteen months' effort, the thirteen Plaintiffs' firms invested a total of $18,609,189.00 in time on the litigation.[30] In addition, they incurred $864,912.40 of expenses necessarily devoted to the effort. The requested fee of approximately $66

[30] See Affidavit of John Alphin, ¶ 3-6, Attach. 2, for an explanation of the lodestar computation. Class counsel are still pursuing other parties responsible for the V.C. Summer project collapse, and have provided a summary figure here to avoid potentially exposing information that could reveal their ongoing strategy. They will supply the Court in camera with detailed time records if the Court desires, although many courts have noted that a lodestar crosscheck does not require such detail. See e.g., In re Genetically Modified Rice Litig., 764 F.3d 864, 871 (8th Cir. 2014) (trial court "was permitted to rely on the summaries and affidavits presented to the court by Lead Counsel and other common benefit attorneys.") The lodestar crosscheck may also be simplified by use of a blended hourly rate. In re NuvaRing Prod. Liab. Litig., 2014 WL 7271959, at *4 (E.D. Mo. Dec. 18, 2014). In computing their lodestar, Class counsel have used average rates based on an attorney's years of experience derived from a matrix approved by a number of courts. See e.g., Salazar v. D.C., 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). Because a lodestar crosscheck is not intended to be an exhaustive examination of the hours spent, counsel have not tried to distinguish the hours between "flash of brilliance" hours and more mundane hours. They know that not all hours have a similar value, which is an additional reason for using standardized, instead of individual hourly rates.

million equates to a 3.5 multiplier on the $18.6 million hourly lodestar. This is well within the accepted multiplier. In Mitchum v. Aiken Electric Cooperative, et al, No. 2014-CP-02-00288 (Aiken Cty. Ct. Com. Pl. June 30, 2015), the Court awarded a percentage fee equating to a 4.16 multiplier and cited numerous courts that had allowed multipliers of 6 or more. Indeed, Federal Judge Henry Floyd awarded Class counsel a $117 million class action fee with a multiplier of 6 in Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc., 2006 WL 8446464, at *5 (D.S.C. Aug. 15, 2006). Moreover, Class counsel's lodestar multiplier will invariably be lower than is currently reflected because counsel have much more work to do after final approval to effectuate the settlement, deal with the property monetization, supervise one or more settlement distributions, and numerous related tasks. All this work will be done for no further counsel fee.

Other courts have similarly awarded class action fees with higher multipliers than would result here. See e.g., Cosgrove v. Sullivan, 759 F. Supp. 166, 167 n.1 (S.D.N.Y. 1991) (8.74 multiplier); Hainey v. Parrott, 2007 WL 3308027, at *1-*3 (S.D. Ohio Nov. 6, 2007) (7.47 effective multiplier); In re Boston & Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A., 778 F. 2d 890, 894, 899 (1st Cir. 1985) (6 multiplier); and In re Krispy Kreme Doughnuts, Inc. Sec. Litig., 2007 WL 119157, at *1-*3 (M.D.N.C. Feb. 15, 2007) (6 multiplier). This cross-check is an additional factor supporting the reasonableness of the fee.

3. Professional Standing of Counsel

A case of this importance demands extremely skilled counsel on both sides. Class counsel are among the most esteemed class action and complex litigation attorneys in the state and nation. By working efficiently, Class counsel were able to focus on the

important issues, uncover the critical information, and reach a reasonable resolution before SCE&G could increase the class losses. They believe their performance echoes this Court's sentiments in Anderson Memorial Hosp., "This result was obtained despite worthy and able opposition by defense lawyers who are known for their excellence." Slip op. at 6-7.[31] Class counsel provide a brief summary of the key attorneys involved and their contributions below:

a. Strom Law Firm, LLC

Lead counsel, the Strom Law Firm, LLC, has one of the most experienced litigators in the state in J. Preston Strom, Jr. Mr. Strom, a former United States Attorney for the District of South Carolina, brought his 35 years of litigation and organizational skill to create an effective structure to prosecute this case. He efficiently utilized the extraordinary talents of his firm and the other firms involved. Jessica L. Fickling and John R. Alphin in his firm prepared important pleadings, pursued discovery, coordinated efforts to assist the ORS, and delved deeply into the financial and regulatory nuances of the project that proved critical in peeling back the layers of inefficiency and concealment that shrouded the project.

b. Richardson Patrick Westbrook & Brickman, LLC

Richardson Patrick Westbrook & Brickman, LLC attorney Terry E. Richardson, Jr., a member of Plaintiffs' executive committee, is widely regarded as among the most imaginative and skilled litigators in the state. Mr. Richardson has been practicing law for 45 years and achieved numerous verdicts and multi-million dollar settlements. His firm has been named as Class counsel in approximately 40 class actions throughout the

[31] Attach. 12.

country. Mr. Richardson was a tireless advocate for the class and provided numerous creative ideas to advance the case.

Edward J. Westbrook, another senior lawyer in the firm, who argued with co-counsel the motion for preliminary settlement approval, was named a 2019 Lawyer of the Year in mass tort litigation and class actions. In 2018, he was nominated to the National Trial Lawyers Top 25 Class Action Trial Lawyers Association. He was heavily involved in the nationwide tobacco litigation that resulted in a $250 billion settlement and was appointed by the Delaware Bankruptcy Court as special counsel to represent a nationwide class of homeowners that resulted in a $140 million settlement. Mr. Westbrook's 40 years of class action experience include cases in state and federal court throughout the country.

Dan Haltiwanger was heavily involved in substantive liability issues including seeking out and deposing critical witnesses in the case. He was responsible for, among others, the Carlette Walker and Kenneth Browne depositions that provided critical evidence concerning SCE&G's lack of candor in dealing with the public and the PSC on the V.C. Summer project.

c. Bell Legal Group, LLC

Edward M. Bell of the Bell Legal Group, LLC is an accomplished trial lawyer, having tried over 300 cases in his career. He has been named lead counsel in numerous complex civil litigation actions throughout the United States. Mr. Bell took two critical deposition in the case including Steve Byrne, SCE&G Vice President, whose testimony reflected SCE&G's determination to continue the project due to its perverse financial

incentives despite no continuing basis for it. He also deposed SCE&G President, Kevin Marsh, who similarly showed no appreciation for SCE&G's mishandling of the project.

d. Speights & Solomons, LLC

Daniel A. Speights, has been practicing law for over 45 years. He is nationally known for his involvement in complex class actions and mass tort litigation including appearing as counsel for property owners in numerous bankruptcy courts. He has tried numerous complex cases to verdict. Gibson Solomons has likewise been involved in numerous class actions.

Speights & Solomons' contributions to the litigation include: filing the Lightsey action; developing the theories of the case; taking a key role in researching the underlying legal basis of the claims and drafting memorandums in response to defense challenges to the claims; serving as liaison counsel for the litigation; negotiating all case management orders including consolidating the three suits into the Lightsey case; successfully arguing in opposition to all motions for judgment as a matter of law on multiple novel issues of law; filing a motion to certify the class and arguing in support of contested class certification; drafting proposed Orders certifying the class and denying the motions to dismiss; serving as coordinating counsel for trial including the planning of discovery; participating in the settlement negotiations; preparing for and taking, either as primary or assisting attorney, the majority of all depositions; and providing information to counsel for the ORS to assist in the PSC proceedings.

e. Lewis Babcock, LLP

Lewis Babcock, LLP, has extensive experience in class actions. The firm's co-founder, A. Camden Lewis (1941-2017) was the firm's initial lead counsel in this case.[32] Mr. Lewis headed the firm's class action practice for over 20 years and co-authored a primer on class actions, Lewis and Sullivan on Class Actions (S.C. Bar 2005). The firm has represented Plaintiffs in numerous successful class actions including: Littlejohn v. State of South Carolina, No. 00-CP-40-2666 (Richland Cty. Ct. Com. Pl.) (taxpayer refunds for excessive sales tax collections from citizens over 85); and Layman v. State, 368 S.C. 631, 630 S.E.2d 265 (2006) (state retiree refunds wrongfully withheld by the state).

Keith M. Babcock and Ariail E. King, have 43 years and 23 years' experience respectively. Mr. Babcock was an Assistant Attorney General for South Carolina from 1977 to 1981, and is a member of American Board of Trial Advocates (ABOTA). Ariail King has been in private practice since 1996, focusing on civil litigation, in particular class actions. In 2005, she assisted in authoring the book, Lewis and Sullivan on Class Actions (S.C. Bar 2005).

f. Savage, Royal & Sheheen, LLP

Senior member, Vincent Sheheen, provided valuable assistance to his fellow class counsel in helping them evaluate the interaction of the class actions with the PSC proceedings in light of the legislature's interest in a fair resolution for SCE&G customers. Mr. Sheheen brought to Class counsel a helpful appreciation for complex litigation, as his

[32] As this Court knows, Cam Lewis passed away in November 2017, not long after this matter was filed in August 2017. However, he was instrumental at the initiation and early stages of this litigation.

firm has recovered millions of dollars for its clients, including multi-million dollar verdicts and settlements in complex product defect cases, class actions, and business litigation.

g. McGowan, Hood & Felder, LLC

McGowan, Hood & Felder, LLC ("MHF") is a South Carolina-based complex litigation firm with 22 lawyers in six offices. Members of MHF's Class Action, Mass Tort & Government Representation practice group have played significant lead and liaison counsel roles in complex class action and multidistrict litigation involving pharmaceutical drugs, healthcare fraud, defective products, antitrust, and consumer protection. The group is led by James L. Ward, Jr. and includes Whitney Harrison and Ranee Saunders, all of whom were significantly involved in this litigation.

MHF's major contributions to the success of this litigation include successfully opposing SCE&G's appeal from the denial of its motion to dismiss; researching, briefing, and arguing significant motions, including the motion for partial summary judgment on the constitutionality of the BLRA; analyzing and organizing evidence in support of claims; providing material support to the ORS with regard to the PSC proceedings by assisting the ORS with the fundamental facts of the case and the import of the BLRA's framework, along with preparation for depositions; preparing for and conducting key depositions, including that of George Wenick regarding the Bechtel Report; assisting in negotiating the terms of the settlement agreement; drafting all settlement documents; researching, briefing, and arguing with co-counsel the motion for preliminary approval; and directing all aspects of the notice and settlement administration.

h. Coleman & Tolen, LLC

For the past eighteen years, Creighton B. Coleman has had an extensive practice in representing plaintiffs in a variety of civil litigation matters. Mr. Coleman provided valuable assistance during prosecution of the Cooper case that was ultimately consolidated into the Lightsey caption.

i. Galvin Law Group, LLC

Mr. Galvin, is an experienced litigator with expertise in technological litigation tools. He has received an award from the South Carolina Federal District Court for assisting the Court with technology issues. Mr. Galvin focused his efforts on the critical task of creating and utilizing a computer platform with Nemo software. He used that system to search the 1.8 million documents produced to find the truly valuable ones and distribute relevant documents to lawyers preparing for depositions and motion hearings. He also participated in the motion to compel the Bechtel documents and deposed SCANA's corporate administrator to determine the computer systems SCANA used to manage the V.C. Summer project.

j. RICO Law Firms

As previously noted, in addition to prosecuting the consolidated class actions in this court, plaintiffs opened a second front in federal court by filing a federal RICO action, Glibowski v. SCANA Corp., et al, 9:18-cv-00273-TLW (D.S.C. filed Jan. 31, 2018).[33] The RICO case, with its threat of treble damages, was an important adjunct to the primary

[33] Glibowski was consolidated with another RICO action, Delmater v. SCANA Corp., No. 3:17-cv-02563-TLW (D.S.C. filed May 18, 2018), also being prosecuted by lawyers involved in the overall class effort as discussed herein.

effort in the state court class actions. By virtue of their special expertise in RICO, these attorneys were able to bring added pressure on SCE&G.

Kenneth F. McCallion, of McCallion & Associates, LLP, New York, New York, has been practicing law for 46 years, including serving as a Special Attorney General in the Justice Department's Organized Crime and Racketeering Section, and as an Assistant United States Attorney in the Eastern District of New York. His practice focuses on complex litigation, mass torts, class actions, and RICO. Working in conjunction with the Lightsey Class counsel, Mr. McCallion helped to draft the RICO complaint and the response to SCE&G's attempt to have the RICO case dismissed.

Working with Mr. McCallion was Thomas A. Holman, of Holman Law, PC Mr. Holman worked closely with the other RICO and South Carolina counsel in drafting the Glibowski complaint and the response to SCE&G's motion to dismiss the RICO case.

The firm of Janet, Janet & Suggs, LLC joined with the Law Offices of Jason E. Taylor, PC, to file the Delmater RICO action that was consolidated under the Glibowski caption in federal court. These firms carefully analyzed the facts concerning the V.C. Summer plant collapse and constructed a detailed RICO complaint relying on those facts.

4. Contingency of Compensation

Although they were advancing novel legal theories against a huge corporation represented by enormously skilled lawyers, Class counsel agreed to undertake this case completely on a contingent basis. The contingency fee contracts with the class representatives ranged from 33⅓ to 40%.[34] Class counsel's compensation was entirely dependent on their success.

[34] Attach. 4.

5. Beneficial Results Obtained

As the United States Supreme Court has recognized, "The most critical factor in determining the reasonableness of a fee award is the degree of success obtained." Farrar v. Hobby, 506 U.S. 103, 114, 113 S. Ct. 566 (1992) (internal quotation marks omitted). Through hard work and determination, Class counsel have achieved significant success when similar litigation elsewhere failed. They have secured what they believe to be the largest private South Carolina state court class settlement in history, which includes one of the largest cash and property settlements ($115 million cash plus property valued at $60 - $85 million) and $2 billion in rate relief. While the PSC will supervise that rate relief, the class settlement is the vehicle that gives customers an enforceable contractual right to that rate relief. The settlement agreement expressly acknowledges that the class action settlement amount includes the $2 billion in rate relief, and allows SCE&G to use that consideration to fund rate relief in the PSC proceedings:

> As an express term of this settlement, the Parties agree that Defendants will receive a credit of up to two billion dollars ($2,000,000,000) toward their Settlement obligation in the amount of the rate relief to inure to the benefit of the Class Members over a period of time established in the contemporaneous proceeding pending before the PSC. It is expressly agreed by the parties that the benefit conferred in the PSC was provided as a direct result of this litigation.
>
> Settlement Agreement at 6, ¶ 2a.
> (emphasis added)

Accordingly, the "degree of success obtained" by the class totals approximately $2.2 billion when the future rate relief "provided as a direct result of this litigation" is considered. Class counsel's requested contingency fee of three percent of the class benefit is not only well within the accepted percentage in mega cases, but less than the five percent they could have requested under the settlement agreement. When Class

counsel informed the class members in the notice that they might request up to five percent of the total benefit conferred, no class member objected.[35] This is an additional indication that the fee requested here is eminently reasonable. See e.g., Spartanburg Reg'l Health Servs., 2006 WL 8446464, at *4 (D.S.C. Aug. 15, 2006) (noting that the requested fee "is less than initially noticed.")

The reasonableness of the fee is further supported by the fact that the three percent class fee, approximately $66 million, is less than two months of the excess rates SCE&G was collecting for the V.C. Summer project. SCE&G was receiving approximately $37 million per month in advance financing costs, and had been doing so for nearly a decade, until the class action played a significant role in stopping that magnitude of unjustified collections.

There is yet another important indicia of success that this action provided. In addition to directly helping the ORS in its efforts at the PSC, the class action also provided the "hammer" to convince SCE&G to move swiftly to resolve the PSC aspect of the controversy. The importance of this litigation to the overall resolution of the V.C. Summer debacle cannot be overstated. By making a credible case that the BLRA was unconstitutional under the South Carolina Constitution, the plaintiff class not only fortified its claims for recovery, but severely undermined SCE&G's attempt to continue to rely on the BLRA at the PSC proceedings. For if this Court had declared the BLRA unconstitutional, it would have halted the PSC proceedings under the BLRA. This would have substantially delayed, if not prevented, the Dominion Energy acquisition of SCE&G.

[35] There have been no objections filed as of the date of filing this brief. Class counsel will address any subsequent objections at the approval hearing.

It was Dominion's takeover that ultimately provided the money both to resolve this suit and implement the settlement's rate relief at the PSC.

In a very real sense, this litigation was the key to achieving the public policy goal of stability in the provision of electric service to South Carolina customers. SCE&G's fear that its years of rate increases under the BLRA might be undone by a finding of the statute's unconstitutionality certainly motivated it to settle this litigation and make significant concessions in the PSC proceedings.

6. The Customary Legal Fee for Similar Services

The nature of the contingency fee system permits greater recovery for successful cases, thereby off-setting losses from unsuccessful cases. Considering the case in its truest sense as a mega case with a $2.2 billion settlement, the three percent fee requested here is at the extremely low end of the range of accepted fees. In the recent opinion in In re Foreign Exch. Benchmark Rates Antitrust Litig., 2018 WL 5839691, at *2 (S.D.N.Y. Nov, 8, 2018), the Court cited a comprehensive study of mega cases which found in "'mega-settlements' exceeding $1 billion ... a mean fee percentage of 13.7% and a median of 9.5%." That court ultimately awarded 13% of a $2.3 billion settlement. Id. at *1.

Similar surveys cited in the Foreign Exch. opinion showed average fees even on settlements larger than this one (exceeding $3 billion) were 6.5%-9.5%. Id. at *3 n.3. While Class counsel could have requested a higher percentage, and had informed the class they might request up to five percent, they have determined in good faith that a three percent fee is extremely fair to the class.

The three percent fee on the class benefit approximates a 33-37% fee on the property and transferred property value, which are the tangible assets available to pay it.[37] With respect to these two components of the settlement, the customary contingency fee charged by Class counsel in a complex case is between 33⅓% and 40%. These percentages are in line with the one-third to one-half of the gross recovery this Court found to be customary in contingent fee cases. Anderson Memorial Hosp., slip op. at 7.[38] The class representatives' fee agreements here are also within that range at 33.33% and 40%.[39]

In Global Protection Corp. v. Halbersberg, 332 S.C. 149, 161, 503 S.E. 2d 483, 489 (Ct. App. 1998), the Court of Appeals approved a one-third fee in an unfair trade practices act case, recognizing that the circuit court "found that contingent fee arrangements were common in complex cases and found that the typical range of such contingency fees was one-third to one-half the recovery." 503 S.E. 2d at 489. This Court recognized the Global Protection precedent in awarding a 33.33% class action fee. Anderson Memorial Hosp., slip op. at 7.[40]

As pointed out previously, other courts in traditional class action cases routinely approve one-third contingency fees. Some award higher percentages. In Fairey v. Exxon Corp., C.A. No. 94-CP-38-118 (Orangeburg Cty. Com. Pl, Oct. 9, 2003), the Court awarded a forty percent fee on a $30 million common fund. The difficulty of issues in this

[37] See Footnote 16.

[38] Attach. 12.

[39] Attach. 4.

[40] Attach. 12.

case rivals that of any of the other South Carolina class action cases discussed, and its prosecution in multiple forums (state court, federal court, PSC proceedings) makes it uniquely more complex than virtually any other case in South Carolina history.

Whether viewed as a mega settlement or a traditional settlement, the fee requested is well within the range of customary fees for similar services.

F. Experts in Complex Litigation Fees Agree That A Three Percent Fee Is Eminently Reasonable Here

Attached hereto are the affidavits of three well-respected experts in complex litigation fee matters who agree that a three percent fee is well within the range of reasonableness in this case. These experts are: (1) the former Chief Judge of the South Carolina Court of Appeals and Acting Associate Justice of the South Carolina Supreme Court (Alex Sanders), Attach. 5; (2) the Dean of South Carolina Legal Ethics and long-time Professor at the University of South Carolina School of Law (John Freeman), Attach. 6; and (3) one of the most respected trial lawyers in the state (Tom Pope), Attach. 7.

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

- "Based on my experience as a lawyer, judge, lecturer, and witness regarding fee matters, it is my considered opinion that the lawyers in this case deserve the requested 3% on the total class benefit of approximately $2.2 billion. This modest percentage fee is quite reasonable considering the significant benefit the class lawyers achieved, consisting of $115 million cash, property valued at $60-85 million, and approximately $2 billion in rate relief to class members."

  Affidavit of Alexander M. Sanders, Jr., ¶ 9.
  Attach. 5.

- "I emphasize that this case was difficult on virtually every possible level. Concluding it successfully is a tribute to class counsel's tenacity, special competence, zeal, attention to sound ethics, and professionalism."

Affidavit of John P. Freeman, ¶ 21.
Attach. 6.

- "Evaluated as a fee sought in a mega-fund case, here the fee sought by class counsel of 3 percent of the common fund is low compared to national norms."

Freeman Affidavit, ¶ 46.
Attach. 6.

- "The fee sought is also appropriate if attention is given only to the fee percentage in relation to the cash and property component of the common fund. The South Carolina Supreme Court determined ... the customary fee in South Carolina for complex cases accepted on a contingent-fee basis ranges from one-third to one-half of the gross recovery ... I personally have participated in very difficult cases where contingent fees of as much as 50 percent were collected."

Freeman Affidavit, ¶ 47.
Attach. 6.

- "This case was not based on "settled law". It was based on novel theories and a delicate weaving together of concepts in an extremely complex factual and legal context. To call the case "difficult" would be an understatement. Class counsel took not only a "leap of faith", but an enormous risk of defeat when they filed these actions.

Pope Affidavit, ¶ 28.
Attach. 7.

- "Class counsel was opposed by a team of distinguished and excellent law firms from South Carolina and Georgia. SCE&G counsel did their job well by testing every factual allegation and by briefing thoroughly their legal points. Their vigorous representation made a very difficult case even more difficult.

Pope Affidavit, ¶ 34.
Attach. 7.

- "It is my opinion that the 3% fee requested in this case with a $2.2 billion settlement is at the low end of the range of acceptable fees."

  Pope Affidavit, ¶ 62.
  Attach. 7.

- "This has been a very difficult and unusual case against excellent, highly competent, and thorough adversaries. Class counsel undertook to do what many thought was an impossible task, and they did the job extremely well. Based on the Jackson v. Speed fee factors, it is clear that the fee request of class counsel in the amount of 3% of the total benefit is reasonable and entirely appropriate."

  Pope Affidavit, ¶ 68.
  Attach. 7.

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

G. Class Counsel Believe It Equitable To Reimburse The ORS From The Common Benefit Fee For Its Outside Counsel Fees

Like virtually everything else connected to this controversy, the fallout from the nuclear plant project cancellation created an unprecedented situation for the ORS. In the words of the ORS Executive Director, the cancellation "created the largest and most complex utility ratemaking docket in South Carolina history."[41] To address this unprecedented situation, the ORS took two important steps. First, it realized the need to fortify its legal staff and hired highly qualified outside counsel.[42] Second, it moved to intervene in this action so that it could formally have the benefit of Class counsel's work.[43]

While Class counsel lent significant assistance to ORS outside counsel, as detailed previously, the ORS efforts before the PSC likewise aided the class effort. At the

[41] Edwards Affidavit, ¶ 2. Attach. 10.

[42] Edwards Affidavit, ¶ 5. Attach. 10.

[43] Edwards Affidavit, ¶ 4. Attach. 10.

PSC, ORS counsel were the first to publicly present the significant evidence against SCE&G that Class counsel had uncovered. This public display of information previously known only to a limited number of participants in the class discovery process undoubtedly caught the attention of SCE&G's (and Dominion's) decision-makers. This likely helped influence them to continue serious settlement discussions with the class, while trying to resolve the PSC issues.

In addition, through collaboration with the ORS, the class was able to effectuate a most economically advantageous use of the $2 billion class settlement benefit in the form of rate relief.[44] Reducing SCE&G's rate base by $2 billion through the credit in the class settlement agreement gives customers a far greater economic benefit over time (due to the financing costs avoided) than paying out $2 billion to the class now and leaving the rate unaffected. That rate relief, which the ORS supported before the PSC, could only be administered by the PSC.

The compressed timeline for the PSC proceedings and the well-financed SCE&G opposition were twin factors that required the ORS to hire expert outside counsel, the Wyche Firm, to present a credible case at the PSC.[45] The ORS incurred $826,467.50 in outside counsel fees to secure the excellent representation that allowed it to prevail at the PSC.[46] Class counsel agree that the public exhibition of the class liability evidence and vigorous advocacy by ORS counsel at the PSC hearings played a helpful role in securing the class relief discussed herein. Rather than have South Carolina taxpayers pay for this

[44] Edwards Affidavit, ¶ 6. Attach. 10.

[45] Edwards Affidavit, ¶ 3-5. Attach. 10.

[46] Edwards Affidavit, ¶ 6. Attach. 10.

representation, Class counsel believe it equitable to recognize the ORS' contribution to the class relief. Accordingly, counsel are agreeable to including reimbursement of the ORS outside counsel attorneys' fees as part of the requested three percent common benefit fee, provided that fee is awarded. This will be a significant savings for South Carolina taxpayers and is in the public interest.

South Carolina law permits those who help create a fund to participate in the common fund fee award. As the ORS is charged with representing SCE&G's customers' interests, and had intervened in this suit to further its obligations, it is appropriate to compensate its efforts in helping create the class benefit for customers. Petition of Crum, 196 S.C. 528, 14 S.E.2d 21 (1941) (those who help create a fund are entitled to fees from it).

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

In the course of representing the three classes, counsel incurred $864,912.40 in out-of-pocket expenses. As the attached affidavit of Class counsel states, these expenses were reasonably incurred in prosecuting the litigation involving the V.C. Summer project.[47] It is appropriate that the class bear the costs of the effort on its behalf. Anderson Memorial Hosp., slip op. at 8.[48]

[47] See Alphin Affidavit, ¶ 7. Attach. 2. Because Class counsel are still pursuing claims against SCE&G for the Santee Cooper customers' claim, and the cost detail might disclose strategic decisions, they have provided a summary expense affidavit. They will provide the expense detail to the Court for in camera review if the Court desires.

[48] Attach. 12.

CONCLUSION

For the foregoing reasons, Class counsel respectfully request that the Court: (1) approve an attorneys' fee of 3% of the common benefit as set forth herein;[49] (2) award reimbursement of class expenses in the amount of $864.912.40; and (3) permit Class counsel to deduct the future costs of administering the settlement from the common benefit fund.

Respectfully Submitted,

/s/ J. Preston Strom, Jr.
STROM LAW FIRM, LLC
J. Preston Strom, Jr.
petestrom@stromlaw.com (SC Bar #5400)
Mario A. Pacella
mpacella@stromlaw.com (SC Bar #68488)
Bakari T. Sellers (SC Bar # 79714)
bsellers@stromlaw.com
Jessica L. Fickling (SC Bar #100161)
jfickling@stromlaw.com
John R. Alphin
jalphin@stromlaw.com
2110 Beltline Blvd.
Columbia, SC 29204
T: 803.252.4800

RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC
Terry E. Richardson, Jr. (SC Bar #4721)
trichardson@rpwb.com
Daniel S. Haltiwanger (SC Bar #15705)
dhaltiwanger@rpwb.com
P. O. Box 1368
Barnwell, SC 29812
T: 803.541.7850

[49] In light of the uncertainty about the ultimate value of the transferred property, Class counsel will not take any fee based on the value of a parcel of property until that value is established by its sale. Accordingly, if the Court awards three percent of the common benefit, Counsel will first receive three percent computed only on the cash value on the date of distribution and the rate relief. As each parcel of property is sold, Counsel will then receive three percent of the sales price. Counsel will provide a full accounting to the Court upon the conclusion of the property monetization.

-and-

Edward J. Westbrook (SC Bar #6040)
ewestbrook@rpwb.com
Jerry Evans (SC Bar #11658)
jevans@rpwb.com
P. O. Box 1007
Mount Pleasant, SC 29464
T: 843.727.6500

LEWIS BABCOCK, LLP
Keith M. Babcock
kmb@lewisbabcock.com
Ariail E. King
aek@lewisbabcock.com
1513 Hampton Street
P. O. Box 11208
Columbia, SC 29211-1208
T: 803.771.8000

SPEIGHTS & SOLOMONS, LLC
Daniel A. Speights
dspeights@speightsandsolomons.com
A.G. Solomons, III
asolomons@speightsandsolomons.com
100 Oak Street
Hampton, SC 29924
T: 803.943.4444

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

SAVAGE, ROYALL AND SHEHEEN, LLP
Vincent Sheheen
vsheheen@thesavagefirm.com
1111 Church Street
Camden, SC 29020
T: 803.432.4391

GALVIN LAW GROUP, LLC
Gregory Michael Galvin
ggalvin@galvinlawgroup.com
P. O. Box 887
Bluffton, SC 29912
T: 843.227.2231

COLEMAN & TOLEN, LLC
Creighton B. Coleman
creighton@colemantolen.com
P. O. Box 1006
Winnsboro, SC 29180
T: 803.635.6884

MCGOWAN, HOOD & FELDER, LLC
Whitney B. Harrison
wharrison@mcgowahood.com
1517 Hampton Street
Columbia, South Carolina 29201
T: (803) 779-0100

-and-

James L. Ward, Jr.
jward@mcgowanhood.com
Ranee Saunders
rsaunders@mcgowanhood.com
321 Wingo Way, Suite 103
Mt. Pleasant, South Carolina 29464
T: (843) 388-7202

McCallion & Associates LLP
Kenneth F. McCallion (pro hac vice)
kfm@mcccallionlaw.com
100 Park Avenue – 16th floor
New York, New York 10017
T: (646) 366-0884

Holman Law, P.C.
Thomas A. Holman (pro hac vice)(N.Y. Reg. 1536754)
taholman@holmanlawoffice.com
99 Park Avenue, Suite 2600
New York, New York 10016
T: (212) 481-1336

Janet, Jenner & Suggs, LLC
Kenneth M. Suggs, (FED ID NO. 3422)
ksuggs@JJSjustice.com
Gerald D. Jowers, Jr. (FED ID NO. 8025)
gjowers@JJSjustice.com
500 Taylor St.
Columbia, SC 29201
T: (803)726-0050

-and-

Patrick A. Thronson (pro hac vice)
pthronson@JJSjustice.com
4 Reservoir Circle, Suite 200
Baltimore, MD 21208
T: (410) 653-3200

The Law Offices of Jason E. Taylor
Brian C. Gambrell (Fed. Id No. 7632)
bgambrell@jasonetaylor.com
P.O. Box 2688
Hickory, NC 28603
T: (800) 351-3008

Dated: April 19, 2019

EXHIBITS

1. SCANA News Release (July 31, 2017)
2. Affidavit of John R. Alphin (April 17, 2019)
3. Richard Kizer email regarding Kevin Marsh employee note (Aug. 2, 2017)
4. Class Representative Fee Agreements
5. Affidavit of Alexander M. Sanders, Jr. (April 15, 2019)
6. Affidavit of John P. Freeman (April 12, 2019)
7. Affidavit of Thomas H. Pope, III (April 17, 2019)
8. Affidavit of Richard A. Harpootlian (April 3, 2019)
9. Affidavit of Wallace K. Lightsey (April 5, 2019)
10. Affidavit of Nanette S. Edwards (April 17, 2019)
11. Newton v. Duke Energy Florida, LLC, No. 16-cv-60341-wpd (S.D. Fla. 2016)
12. Anderson Memorial Hosp. v. W.R. Grace, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008)
13. Tel-Con with Ty Troutman (Feb. 4, 2016)

EXHIBIT 1

SCANA Corporation Contacts:

Media Contact:
Rhonda O'Banion
(800) 562-9308

Investor Contacts:
Bryant Potter
(803) 217-6916

Iris Griffin
(803) 217-6642

SOUTH CAROLINA ELECTRIC & GAS COMPANY TO CEASE CONSTRUCTION AND WILL FILE PLAN OF ABANDONMENT OF THE NEW NUCLEAR PROJECT

SCANA REAFFIRMS EARNINGS GUIDANCE

Cayce, SC, July 31, 2017... South Carolina Electric & Gas Company (SCE&G), principal subsidiary of SCANA Corporation (SCANA) (NYSE:SCG), announced today that it will cease construction of the two new nuclear units (Units) at the V.C. Summer Nuclear Station in Jenkinsville, SC and will promptly file a petition with the Public Service Commission of South Carolina seeking approval of its abandonment plan. This decision was reached by SCE&G after considering the additional costs to complete the Units, the uncertainty regarding the availability of production tax credits for the project, the amount of anticipated guaranty settlement payments from Toshiba Corporation (Toshiba), and other matters associated with continuing construction, including the decision of the co-owner of the project, the South Carolina Public Service Authority (Santee Cooper), the state owned electric utility, to suspend construction of the project. Based on these factors, SCE&G concluded that it would not be in the best interest of its customers and other stakeholders to continue construction of the project.

Following the bankruptcy filing of Westinghouse Electric Company, LLC (WEC), SCE&G and Santee Cooper began a comprehensive process of evaluating the most prudent path forward for the Units. The project owners worked with WEC and Fluor Corporation, as well as other technical and industry experts, to evaluate the project costs and schedules.

Based on this evaluation and analysis, that included accounting for the anticipated receipt of the Toshiba guaranty settlement payments, SCE&G concluded that completion of both Units would be prohibitively expensive. According to SCE&G's analysis, the additional cost to complete both Units beyond the amounts payable in connection with the engineering, procurement, and construction contract would materially exceed prior WEC estimates, as well as the anticipated guaranty settlement payments from Toshiba. Moreover, the Units would need to be online before January 1, 2021, to qualify for production tax credits, under current tax rules. SCE&G's analysis concluded the Units could not be brought online until after this date.

SCE&G also considered the feasibility of completing the construction of Unit 2 and abandoning Unit 3 under the existing ownership structure and using natural gas generation to fulfill any remaining generation needs. This option provided a potentially achievable path forward that may have delivered SCE&G a similar megawatt capacity as its 55% interest in the two Units and provided a long-term hedge against carbon legislation/regulation and against gas price volatility. SCE&G had not reached a final decision regarding this alternative when informed by Santee Cooper that it would be unwilling to proceed with continued construction of two Units or one Unit. Consequently, SCE&G determined that it is not in the best interest of customers and other stakeholders for it to continue construction of one Unit.

Based on this evaluation and analysis, and Santee Cooper's decision, SCE&G has concluded that the only remaining prudent course of action will be to abandon the construction of both Unit 2 and Unit 3 under the terms of the Base Load Review Act (BLRA).

SCANA Chairman and CEO, Kevin Marsh, said "We arrived at this very difficult but necessary decision following months of evaluating the project from all perspectives to determine the most prudent path forward. However, many factors outside our control have changed since inception of this project. Chief among them, the bankruptcy of our primary construction contractor, Westinghouse, eliminated the benefits of the fixed-price contract to our customers, investors, and other stakeholders. Ultimately, our project co-owner Santee Cooper's decision to suspend construction in the project made clear that proceeding on our own would not be economically feasible. Ceasing work on the project was our least desired option, but this is the right thing to do at this time.

"Many of our employees have worked extremely hard over the years to build these new units. That's one of the factors that makes this decision particularly difficult. We are deeply grateful for all their contributions and will do our best to support those affected by these changes. We also recognize the impact that our path forward will have on customers, communities, shareholders, and the nuclear industry as a whole.

"Our belief in the benefits of nuclear generation -- not just for the state, but for the nation -- hasn't changed. As we have been doing for more than 30 years, we will continue providing customers with a valuable low-cost, non-emitting source of generation through our operating nuclear unit at V.C. Summer."

Normal construction activities at the site will cease immediately and efforts will be shifted toward an orderly transition of winding down and securing the project property. SCE&G plans to use the payments resulting from the settlement of Toshiba's guaranty to mitigate cost impacts to SCE&G electric customers.

ABANDONMENT PROCEEDING

We intend to fully brief the SC PSC Tuesday, August 1, 2017 at 10:00 a.m. and thereafter initiate the abandonment proceeding. In accordance with the BLRA, we will seek an amortization of the project costs and a return at the weighted average cost of capital on the unamortized balance until fully recovered. We plan to use the anticipated proceeds from the Toshiba settlement and benefits derived from tax deductions to mitigate future rate increases to lessen the impact on our customers for several years.

ANALYST CALL

SCANA will host a call for financial analysts at 4:00 p.m. Eastern Time on July 31, 2017, during which members of SCANA's management team will discuss this decision and its impact on the Company's operations, financial statements, and growth strategy.

EARNINGS OUTLOOK

Based on 2016 GAAP earnings per share of $4.16, SCANA reaffirms its targeted average annual earnings per share growth rate range to be 2 to 4 percent over the next 3 to 5 years due to incremental electric margins attributable to abnormal weather in 2016. Due to the significance of weather to SCE&G's earnings and its unpredictability, SCANA is not able to provide 2017 GAAP earnings guidance.

For 2017, SCANA reaffirms its guidance for 2017 GAAP-Adjusted Weather-Normalized earnings per share of $4.15 to $4.35, with an internal target of $4.25 per share.

In addition to the GAAP basis long-term growth rate guidance above, SCANA reaffirms its targeted average annual growth rate for GAAP-Adjusted Weather-Normalized earnings per share to be 4 to 6

percent over the next 3 to 5 years based on 2016 GAAP-Adjusted Weather-Normalized earnings per share of $3.97. 2016 GAAP-Adjusted Weather-Normalized earnings per share reflect downward adjustments of 28 cents per share pre-tax and a tax effect of 9 cents per share for a net of tax 19 cents per share to normalize weather in the electric business.

SCANA's management believes that these non-GAAP earnings and earnings growth measures provide a meaningful representation of SCANA's fundamental earnings power and can aid in performing period-over-period financial analysis and comparison with peer group data. In management's opinion, these non-GAAP measures serve as useful indicators of the financial results of the SCANA's primary businesses and as a basis for management's provision of earnings guidance and growth projections. In addition, management uses these non-GAAP measures in part in making budgetary and operational decisions, including determining eligibility for certain incentive compensation payments. These non-GAAP measures are not intended to replace the GAAP measures of earnings per share or average annual earnings per share growth rate, but are offered as supplements to those GAAP measures.

Factors and risks that could impact future earnings are discussed in the Company's filings with the Securities and Exchange Commission and below under the Safe Harbor Statement.

CONFERENCE CALL DETAILS

Date and Time:	Monday, July 31, 2017, 4:00 p.m. Eastern Time	
Call in Number:	U.S.	888-347-3258
	Canada	855-669-9657
	International	412-902-4279
Speakers:	Kevin Marsh	Chief Executive Officer- SCANA
	Jimmy Addison	Chief Financial Officer – SCANA

Instructions: The conference call will begin promptly at 4:00 p.m. Eastern Time. Participants should call in 10-15 minutes early so that operators have sufficient time to record your name and company affiliation prior to the call beginning. Participants who join the call late will be interrupted during the call by the operator to record their name and company affiliation. A replay of the conference call will be available approximately 2 hours after completion of the call through August 14, 2017. To access the replay, call 877-344-7529 (U.S.), 855-669-9658 (Canada), or 412-317-0088 (International) and enter the event code 10110861. A transcript of the call will be available on the Investors section of the Company's website at www.scana.com.

Internet Access: The press release, presentation materials and a live listen-only webcast of the conference call will be available on the Investors section of the website at www.scana.com. The webcast will begin Thursday, July 31, 2017 at 4:00 p.m. Eastern Time. A replay of the conference call will also be available on the Company's website through August 14, 2017.

PROFILE

SCANA Corporation, headquartered in Cayce, S.C., is an energy-based holding company principally engaged, through subsidiaries, in electric and natural gas utility operations and other energy-related businesses. The Company serves approximately 718,000 electric customers in South Carolina and

approximately 1.3 million natural gas customers in South Carolina, North Carolina and Georgia. Information about SCANA and its businesses is available on the Company's website at www.scana.com.

SCE&G is a regulated public utility engaged in the generation, transmission, distribution and sale of electricity to approximately 718,000 customers in South Carolina. The company also provides natural gas service to approximately 362,000 customers throughout the state. More information about SCE&G is available at www.sceg.com.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

Statements included in this press release which are not statements of historical fact are intended to be, and are hereby identified as, "forward-looking statements" for purposes of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include, but are not limited to, statements concerning key earnings drivers, customer growth, environmental regulations and expenditures, leverage ratio, projections for pension fund contributions, financing activities, access to sources of capital, impacts of the adoption of new accounting rules and estimated construction and other expenditures. In some cases, forward-looking statements can be identified by terminology such as "may," "will," "could," "should," "expects," "forecasts," "plans," "anticipates," "believes," "estimates," "projects," "predicts," "potential" or "continue" or the negative of these terms or other similar terminology. Readers are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties, and that actual results could differ materially from those indicated by such forward-looking statements. Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements include, but are not limited to, the following: (1) uncertainties relating to the bankruptcy filing by the members of the Consortium building the New Units, including the effect of the anticipated rejection of the EPC Contract and the determination to cease construction of the New Units; (2) the ability of SCANA and its subsidiaries (the Company) to recover through rates the costs incurred upon the abandonment of the New Units; (3) the ability of the Company to recover amounts due from the Consortium or from Toshiba under its payment guaranty and related settlement agreement; (4) changes in tax laws and realization of tax benefits and credits, and the ability or inability to realize credits and deductions, particularly in light of the abandonment of construction of the New Units; (5) the information is of a preliminary nature and may be subject to further and/or continuing review and adjustment; (6) legislative and regulatory actions, particularly changes related to electric and gas services, rate regulation, regulations governing electric grid reliability and pipeline integrity, environmental regulations, the BLRA, and actions affecting the abandonment of the New Units; (7) current and future litigation; (8) the results of short- and long-term financing efforts, including prospects for obtaining access to capital markets and other sources of liquidity, and the effect of rating agency actions on the Company's cost of and access to capital and sources of liquidity; (9) the ability of suppliers, both domestic and international, to timely provide the labor, secure processes, components, parts, tools, equipment and other supplies needed which may be highly specialized or in short supply, at agreed upon quality and prices, for our construction program, operations and maintenance; (10) the results of efforts to ensure the physical and cyber security of key assets and processes; (11) changes in the economy, especially in areas served by subsidiaries of SCANA; (12) the impact of competition from other energy suppliers, including competition from alternate fuels in industrial markets; (13) the impact of conservation and demand side management efforts and/or technological advances on customer usage; (14) the loss of electricity sales to distributed generation, such as solar photovoltaic systems or energy storage systems; (15) growth opportunities for SCANA's regulated and other subsidiaries; (16) the effects of weather, especially in areas where the generation and transmission facilities of SCANA and its subsidiaries are located and in areas served by SCANA's subsidiaries; (17) changes in SCANA's or its subsidiaries' accounting rules and accounting policies; (18) payment and performance by counterparties and customers as contracted and when due; (19) the results of efforts to license, site, construct and finance facilities, and to receive related rate recovery, for electric generation and transmission; (20) the results of efforts to operate the Company's electric and gas systems and assets in accordance with acceptable performance standards, including the impact of additional distributed generation; (21) the availability of fuels such as coal, natural gas and enriched uranium used to produce electricity; the availability of purchased power and natural gas for distribution; the level and volatility of future market prices for such fuels and purchased power; and the ability to recover the costs for such fuels and purchased power; (22) the availability of skilled, licensed and experienced human resources to properly manage, operate, and grow the Company's businesses; (23) labor disputes; (24) performance of SCANA's pension plan assets and the effect(s) of associated discount rates; (25) inflation or deflation; (26) changes in interest rates; (27) compliance with regulations; (28) natural disasters and man-made mishaps that directly affect our operations or the regulations governing them; and (29) the other risks and uncertainties described from time to time in the reports filed by SCANA or SCE&G with the SEC.

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CASE NO.: 2017-CP-25-335
Richard Lightsey, LeBrian Cleckley, Phillip Cooper, et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	
South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, SCANA Corporation, and the State of South Carolina,	)	
Defendants,	)	
South Carolina Office of Regulatory Staff,	)	
Intervenor.	)	

AFFIDAVIT OF JOHN R. ALPHIN

I, John R. Alphin, after being duly sworn, avers as follows:

1. I am an attorney at the Strom Law Firm, LLC, where I have practiced since 2005. I have a Bachelor's of Science in Business Administration and Accounting from the University of South Carolina, and have been a member of the South Carolina Bar since 2005. Subsequently, I received my LLM in Taxation from the University of Florida. I am also admitted to practice in the District Court for the District of South Carolina, United States Court of Claims, United States Tax Court, and the Fourth Circuit Court of Appeals. My practice focuses primarily on complex litigation, class actions, mass torts, alcohol beverage licensing, and criminal and civil tax litigation. I make this affidavit based on my own personal observation and knowledge.

2. Because of my background in accounting and tax, I was assigned by lead counsel to oversee Class Counsel's hours and expenses. Accordingly, Members of Class Counsel were directed to submit detailed time records and reports to me for review and confirmation. Class Counsel further submitted affidavits to me regarding their time submissions in this case.

3. Based on the affidavits and detailed time records provided to me, members of Class Counsel spent 26,778.58 hours of attorney and paralegal time in pursuit of this litigation, and companion litigation.[1] This total is broken down as follows:

a. Attorneys with more than 30 years of experience – 9,022.45 hours;

b. Attorneys with more than 20 but less than 30 years of experience – 3,870.85 hours;

c. Attorneys with more 10 years but less than 20 years of experience – 7,707.50 hours;

d. Attorneys with less than 10 years of experience – 3,899.49 hours; and

e. Paralegals – 2,278.29 hours.

4. Member Firms collectively spent the following hours on this litigation, and companion litigation:

a. Strom Law Firm, LLC – 7,257.50 hours;

b. Richardson, Patrick, Westbrook & Brickman LLC – 3,858.05 hours;

c. Speights & Solomons, LLC – 4,981.90 hours;

d. McGowan, Hood & Felder, LLC – 2,341.75 hours;

e. Bell Legal Group, LLC – 1,323.44 hours;

[1] Companion litigation includes Class Counsel's efforts to: (1) intervene in the declaratory judgment brought by SCE&G before the federal court concerning an amendment to the Base Load Review Act (BLRA), *South Carolina Electric & Gas Company v. Swain E. Whitfield, et al*, 3:18-cv-01795; (2) assist the Office of Regulatory Staff (ORS) in the then-pending matter before the Public Service Commission (PSC), 2017-370-E; and (3) file the Racketeer Influenced and Corrupt Organization Act (RICO) action in federal court, *Glibowski v.SCANA Corp.*, et al, 18-cv-00273-TLW.

f. Lewis Babcock, LLP – 1,323.00 hours;

g. Savage, Royall and Sheheen, LLP – 495.40 hours;

h. Galvin Law Group, LLC – 1,367.80 hours;

i. Coleman & Tolen, LLC – 2,009.70 hours;

j. Holman Law, P.C. – 642.40 hours;

k. McCallion & Associates, LLP – 295 hours;

l. The Law Offices of Jason E. Taylor, P.C. – 313.10 hours; and

m. Janet Jenner & Suggs, LLC – 569.54 hours.

5. In the calculation of lodestar, rates used by Members of Class Counsel with less than 30 years of experience were at least 10% less than the current rates set forth by the Laffey matrix.[2]

6. The total lodestar for Class Counsel equated to $18,609,189.55.

7. Class Counsel's expense case specific costs total $864,912.40.

8. While the hours set forth above are representative of Class Counsel's effort, the greatest testament of counsel's impact is demonstrated in the efficient way Class Counsel conferred a comparatively broad economic benefit on the Class Members. When SCE&G initially abandoned the project on July 31, 2017, SCE&G informed the public that it would be utilizing the protections of the Base Load Review Act (BLRA) to seek an "amortization of the project costs and a return at the weighted average cost of capital on the unamortized balance until fully recovered." In sum,

[2] As used herein, the Laffey matrix refers to the matrix of hourly rates for attorneys of varying degrees and levels of experience, along with professional support staff including paralegals and law clerks, often used by civil divisions of the United States Attorneys Offices throughout the nation. Laffey matrix, http://www.laffeymatrix.com/see.html (last visited April 8, 2019). *See also Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert denied*, 472 U.S. 1021 (1985)

SCE&G announced its intention to recover all of the remaining costs of the V.C. Summer Project from customers.

9. Prior to Plaintiff's lawsuit, SCE&G filed a petition with the PSC seeking to recover approximately $4.9 billion additional dollars from customers related to the V.C. Summer project (exclusive of the transmission investments). *See*, Exhibit 1, Petition of South Carolina Electric and Gas Company, dated August 1, 2017 at §§ 42, 48(a) and Exhibit 1 of the Petition. According to the initial petition, this amount would be included in customer rates over a period of 60 years. *Id.* at § 48(d)-(h). At the conclusion of Plaintiff's litigation, and due to the efforts of Class Counsel, SCE&G and Dominion agreed to cut this number to $2.772 billion, and further agreed to cut the period of recovery from sixty (60) years to twenty (20) years.

10. This reduction of $2.128 billion from the rate base will never be passed along to customers. This precise amount was selected based on expenses from the Project's inception through March 12, 2015, when, according to testimony gathered through Plaintiffs' depositions of Carlette Walker and Kenneth Browne, SCE&G knew or should have known the numbers it was publicly submitting to the PSC were inaccurate.

11. The second benefit realized from Plaintiffs' settlement comes in the form of levelized refunds totaling $2.039 billion to be realized over the twenty-year recovery period. Exhibit 2, Second Supplemental Rebuttal Testimony of Prabir Purohit at 4. This works in similar fashion to rebates, but requires no action on the part of customers to invoke the benefit. This amount is broken into two parts. A refund of $1.032 billion, which will be used to reduce customer bills over the entire twenty-year recovery period, and a second refund of $1.007 billion, which will be used to further reduce customer bills for an eleven-year recovery period. *Id.*

12. This relief equates to a total benefit of over four (4) billion dollars to customers and was a direct result of this Litigation and Settlement, as acknowledged by all parties in Paragraph 2(a) of the settlement agreement.

13. In May 2017, the average monthly customer electric bill for an SCE&G residential customer was $147.53. Exhibit 2 at 8. Following this litigation, the average monthly customer electric bill for an SCE&G residential customer is $125.26. This equates to a reduction of 15%. *Id.*

14. Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true, accurate, and complete to the best of my knowledge.

John R. Alphin

Sworn to before me this 17th day of April 2019.

Notary Public for South Carolina
My Commission Expires: 3/11/21

EXHIBIT

1

BEFORE

THE PUBLIC SERVICE COMMISSION

OF

SOUTH CAROLINA

DOCKET NO. 2017-__-E

In Re: Petition of South Carolina Electric & Gas Company for Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for V.C. Summer Units 2 & 3 and Related Matters	**PETITION OF SOUTH CAROLINA ELECTRIC & GAS COMPANY**

South Carolina Electric & Gas Company ("SCE&G" or the "Company") hereby petitions the Public Service Commission of South Carolina (the "Commission") for an order amending the capital cost schedule, construction schedule and other terms and conditions of orders concerning the construction of two 1,117 net megawatt nuclear units (the "Units") at the V.C. Summer Nuclear Station site near Jenkinsville, South Carolina to reflect the Company's decision, as of July 31, 2017, to abandon construction of the Units. This petition (the "Petition") is filed pursuant to the provisions of the Base Load Review Act ("BLRA"), S.C. Code Ann. §§ 58-33-270(E) and 58-33-280(K) (2015). In accordance with the provisions of the BLRA, SCE&G would respectfully show to the Commission the following:

I. INTRODUCTION

1. SCE&G is a corporation duly organized and existing under the laws of the State of South Carolina, with its principal offices at 220 Operation Way, Cayce, South Carolina, 29033.

2. SCE&G is engaged in the business of generating, transmitting, and delivering electricity and providing electric service to the public for compensation. SCE&G owns and operates an integrated electric utility system that serves approximately 718,000 customers in 24 counties in central and southern South Carolina.

3. Corporate legal counsel for SCE&G in this proceeding are as follows:

K. Chad Burgess
Matthew W. Gissendanner
South Carolina Electric & Gas Company
Mail Code C222
220 Operation Way
Cayce, SC 29033
(803) 217-8141
chad.burgess@scana.com
matthew.gissendanner@scana.com

Private legal counsel for SCE&G in this proceeding is as follows:

Mitchell Willoughby
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
(803) 252-3300
mwilloughby@willoughbyhoefer.com

Belton T. Zeigler
Womble Carlyle Sandridge & Rice, LLP
1221Main Street, Suite 1600
Columbia, SC 29201
(803) 454-7720
belton.zeigler@wcsr.com

All correspondence and any other matters relative to this proceeding should be addressed to these representatives.

PRIOR BLRA ORDERS

4. In Order No. 2009-104(A), the Commission made prudency determinations and approved a forecasted construction milestone schedule and a forecasted capital cost schedule for the Units. The approved capital cost was $6.3 billion in future dollars.[1]

5. In four ensuing orders, the Commission approved changes to the schedules of costs or construction schedules for the Units.[2]

6. In the most recent order, Order No. 2016-794, the Commission approved SCE&G's request for a new construction milestone schedule tied to new substantial completion dates for the Units of August 31, 2019, and August 31, 2020, and to update the forecasted capital costs of the Units to approximately $7.7 billion in future dollars.

---

[1] Unless otherwise noted, all amounts reflect SCE&G's portion of the cost of the Units in future dollars.

[2] Order No. 2010-12; Order No. 2011-345; Order No. 2012-844; Order No. 2015-661.

7. The schedules approved in Order No. 2016-794 were based on the October 2015 amendment to the Engineering, Procurement and Construction Agreement ("EPC Contract") under which the Units were being constructed by Westinghouse Electric Company, LLC ("Westinghouse"). In that amendment, Westinghouse agreed to complete the principal scopes of work remaining under the EPC Contract for a fixed price of $3.345 billion in future dollars for invoices paid after June 30, 2015, resulting in a total price under the fixed price option of approximately $7.7 billion.

8. In the first quarter of 2017, Westinghouse informed SCE&G that the substantial completion dates for the Units would be April of 2020 and December of 2020.

II. FACTUAL BACKGROUND FOR THE REQUEST

9. On March 29, 2017, Westinghouse and certain affiliates petitioned for protection under Chapter 11 of the United States Bankruptcy Code.

10. Westinghouse's announced goal was to isolate its businesses other than new nuclear construction from the losses attributable to the EPC Contract and the contract to construct two similar units at the Vogtle Electric Generating Plant in Waynesboro, Georgia.

11. At the time of the bankruptcy filing, Westinghouse informed SCE&G and the co-owner of the project, the South Carolina Public Service Authority ("Santee Cooper"), that it intended to use the provisions of the Bankruptcy Code to reject its obligations to complete the Units under the provisions of the EPC Contract.

12. Westinghouse's rejection of the EPC Contract would mean that SCE&G and Santee Cooper can no longer rely on Westinghouse to complete construction of the project under the fixed price guaranties contained in the EPC Contract, as amended.

13. On July 27, 2017, SCE&G and Santee Cooper entered into an agreement with Westinghouse's parent company, Toshiba Corporation ("Toshiba"), under which Toshiba will pay SCE&G approximately $1.2 billion in satisfaction of all claims for damages associated with Westinghouse's anticipated rejection of the EPC Contract. This $1.2 billion represents SCE&G's 55% share of the payments. Some of these funds would be used to liquidate certain contractors' liens, which would result in a remaining amount estimated at $1.1 billion gross of tax. The amount after tax is estimated to be $700 million. The net amount of the Toshiba guaranty settlement payments after taxes, *i.e.*, approximately $700 million, will be applied to reduce rates to customers as set forth below.

A. The Evaluation of Cost to Complete

14. In anticipation of Westinghouse's rejection of the EPC Contract, SCE&G and Santee Cooper each undertook an evaluation of their options regarding the project.

15. The options SCE&G evaluated included completing both Units, cancelling both Units, and completing one Unit and delaying or cancelling the other.

16. To support the evaluation, SCE&G and Santee Cooper each undertook to create their own individual cost and completion schedules for the Units based on those provided by Westinghouse.

17. For this purpose, SCE&G assembled a team of construction and financial experts supported by external consulting firms with expertise in scheduling and estimating, as well as direct expert engineering support from Westinghouse and construction expertise from Fluor Corporation.

18. Through an Interim Assessment Agreement with Westinghouse, which was executed at the time of the bankruptcy filing, SCE&G obtained direct access to Westinghouse's construction scheduling and cost data, commodity quantity and installation rates, commercial information, and vendor and supplier contracts for the purpose of conducting this evaluation, much of which was previously unavailable to SCE&G.

19. After a careful review and assessment of this data by its evaluation team and senior leadership, SCE&G has determined that the reasonable, likely and prudent schedule for construction of the Units would result in substantial completion of Unit 2 by December 31, 2022 and Unit 3 by March 31, 2024.

20. After a careful review and assessment of the relevant data by its evaluation team and senior leadership, SCE&G determined that the reasonable, likely and prudent forecasted cost schedule for completion of the Units would be approximately $8.8 billion (SCE&G's share in future dollars).

21. SCE&G also carefully reviewed and assessed the cost of completing Unit 2 and abandoning Unit 3. This assessment indicated that the reasonable, prudent and likely cost of completing Unit 2 and abandoning Unit 3 would be approximately $7.1 billion.

22. These cost forecasts include the additional Owner's cost SCE&G would anticipate incurring by assuming a broader scope of responsibility for directing the project and as a result of the extensions in the substantial completion dates for the Units.

23. These forecasted costs of the Units at completion are net of the approximately $1.1 billion in Toshiba guaranty settlement payments.

24. The resulting net estimated cost to complete both Units is approximately $1.1 billion more than the comparable cost as approved in Order No. 2016-794 and approximately three times the estimate of the additional costs above the fixed price option required to complete the Units that Westinghouse provided SCE&G in the first quarter of 2017.

B. Alternatives for Completing, Modifying or Cancelling the Project

25. In evaluating the options for proceeding with the project or cancelling it, SCE&G has reviewed each option considering (a) the capital costs involved in completing or abandoning construction, (b) the construction risks involved and potential for cost increases and delay beyond those currently anticipated if the decision were made to complete one or both Units, (c) the mix of generating capacity serving its customers that would result from each potential course of action, (d) the exposure of the generation system and its customers to environmental cost risks, carbon emissions charges, fuel price volatility and other risks under each path forward, and (e) the levelized cost to customers forecasted under the multiple planning scenarios.

26. Using a system planning methodology comparable to that used in the studies presented to the Commission in prior proceedings since 2008, SCE&G has modeled the direct financial costs and benefit to customers from completing one or both Units versus cancelling one or both of them.

27. This numerical analysis considered costs to customers over a 40 year planning horizon.

28. In all cases, the analysis assumed that the deadline for Federal Nuclear Production Tax Credits (PTCs) will be extended such that both Units will qualify for credits. There are, however, substantial risks associated with the receipt of the PTCs given current construction schedules.

29. In all cases, the actual and reasonably foreseeable benefits of increased solar energy sources and of energy efficiency gains and demand reduction are included in the forecasts. SCE&G has and will continue to encourage, promote and incentivize energy efficiency measures and the addition of solar power and other alternative energy sources to its system.

30. The levelized annual cost to customers of each of the alternative plans was assessed against multiple scenarios reflecting differing assumptions related to natural gas prices and future costs for CO_2 emissions defining a broad range of possible future outcomes.

31. These analyses indicated that in a number of reasonably probable planning scenarios there could be significant levelized cost benefits to SCE&G's system and

customers over 40 years from completing one or both Units, so long as current costs forecasts and construction schedules were to prove reasonably accurate, PTC deadlines were adjusted, and natural gas prices and CO_2 costs fell within the ranges assumed.

32. Based on this evaluation, SCE&G anticipated that a prudent and economically practical path in light of capital requirements and rate impacts could be to abandon or delay Unit 3 and complete Unit 2.

33. This was based on the assumption that Santee Cooper would remain a 45% partner and with SCE&G relying on gas generation to fulfill current and future generation needs that would be unmet if one unit were cancelled.

34. Significant risks remained to be evaluated concerning the option of completing Unit 2 only.

35. Those risks included construction schedule risk, construction cost risk, risks that the PTCs would not be available and risks that the rate impact of completing Unit 2 would be unacceptable to customers and the regulatory process.

36. The evaluation of these risks was never brought to a conclusion.

37. After a protracted period of intensive discussions between the parties, Santee Cooper's board announced on July 31, 2017, that it was suspending construction of the project.

38. SCE&G's evaluation process had shown that completing Unit 2 would not be beneficial to customers and economically and financially feasible if Santee Cooper did

not participate in the project and pay its 45% share of the construction and operating costs of that Unit.

39. Therefore, as of July 31, 2017, SCE&G has determined the only reasonable and prudent course of action is to abandon construction of the Units and return the site to a stable condition.

40. On July 31, 2017, SCE&G informed Westinghouse and the Fluor Corporation of its decision and instructed them to cease all work on the project other than work necessary to safely and efficiently demobilize construction and to stabilize the site.

III. REQUEST FOR RELIEF

Prudency Determination Concerning Abandonment

41. Based on the foregoing, SCE&G seeks an order from the Commission affirming under S.C. Code Ann. § 58-33-280(K) that SCE&G's decision to abandon the project effective July 31, 2017, is reasonable and prudent.

The BLRA Cost Schedule through September 30, 2017

42. SCE&G requests the Commission to adopt the cost schedule set forth in ***Exhibit 1*** to this Petition as a reasonable and prudent schedule of the capital costs associated with the Units incurred as of September 30, 2017, (the "Capital Costs"). As shown on ***Exhibit 1***, the Capital Costs to be incurred through September 30, 2017, are

approximately $5.3 billion including transmission costs, which total approximately $316 million, and approximately $4.9 billion excluding transmission costs.

43. ***Exhibit I*** includes a reasonable and prudent forecast of the costs that SCE&G expects to spend between July 31, 2017, and September 30, 2017, to demobilize the construction team and begin to restore the site to a stable condition. The Capital Costs anticipated to be incurred during this period, net of transmission costs, are approximately $220 million.

44. SCE&G is evaluating the costs of completing the winding up of the project after September 30, 2017, and will present its forecasts and conclusions to the Commission when this evaluation is completed.

Accounting for Transmission Projects

45. Investment in certain transmission lines and other transmission assets were included in the scope of work to construct the Units as approved under Order No. 2009-104(A) and subsequent BLRA orders (the "Transmission Projects").

46. These Transmission Projects represent a necessary and valuable addition to the capacity, reliability and efficiency of the transmission system that SCE&G uses to serve its customers daily and will not be abandoned.

47. To provide for the reasonable and appropriate accounting treatment for the Transmission Projects going forward, SCE&G requests that the Commission direct SCE&G, as of the effective date of the revised rates order that SCE&G plans to request in

the fourth quarter of 2017, (the "2017, Revised Rates Order" and the "2017, Revised Rates Proceeding"):

a. To remove from the balance of Capital Costs for BLRA purposes SCE&G's capital costs incurred in constructing the Transmission Projects.

b. To treat the costs associated with the Transmission Projects as costs that are no longer associated with a base load plant being constructed under the terms of the BLRA; and

c. To defer as a regulatory asset for recovery in a future rate proceeding the operating and maintenance costs associated with the Transmission Projects after they are placed in service, including depreciation, property taxes, insurance, and other operating and maintenance costs. SCE&G also requests authorization to accrue carrying costs, at its weighted average cost of long-term debt, on the balance of the deferred costs in this regulatory asset.

Accounting for and Recovery of Capital Costs

48. To properly provide for the recovery of the Capital Costs of the Units as envisioned under S.C. Code Ann. §§ 58-33-270(E) and 58-33-280(K), SCE&G requests that the Commission authorize and direct SCE&G:

a. To create a regulatory asset account in its retail electric utility rate base in which SCE&G will record the Capital Costs as a regulatory asset for future recovery through rates (the "Capital Costs Account");

b. To include in Capital Cost the amount of severance expense and other severance and employment related costs, including associated accounting adjustments;

c. To record carrying costs at the Company's weighted average cost of long-term debt on any Capital Costs not currently reflected in revised rates from July 31, 2017, until such time as a cost of capital is reflected in rates on those costs;

d. To include a revenue component in the adjustment to rates that will be implemented in the 2017, Revised Rates Proceeding which shall be sufficient to amortize the Capital Costs over 60 years (the "Amortization Charge");

e. To effect the recovery of the Amortization Charge initially through revised rates under S.C. Code Ann. § 58-33-280 and subsequently as a component of retail electric base rates when new electric base rates are approved for SCE&G in future proceedings under S.C. Code Ann. §§ 58-27-810 *et seq.*;

f. To reflect this Amortization Charge in rates until the Capital Costs Account balance has been fully amortized;

g. To include in the adjustment to rates that will be implemented in the 2017, Revised Rates Proceeding a revenue component which shall be sufficient to recover the utility's weighted average cost of capital ("Cost of Capital"), as defined in S.C. Code Ann. § 58-33-210(22), applied to the balance in the Capital Costs Account which is not currently reflected in revised rates;

h. Thereafter, to include in revised rates or retail electric rates a component sufficient to recover the Cost of Capital applied to the balance in the Capital Costs Account until that balance has been fully amortized.

49. By making the mitigating adjustments that are requested below, the revised rates required to reflect abandonment of the Units should not result in any cost increase to customers compared to current rates for a number of years.

Rate Mitigation

50. To mitigate cost increases to customers, SCE&G requests that the Commission direct it to flow back to customers in rate mitigation an amount equivalent to the estimated value of the anticipated Toshiba guaranty settlement payments after reduction by SCE&G's statutory rate of state and federal income taxes and the payment of liens and certain pre-bankruptcy claims against the project by contractors and subcontractors. The net amount which would be reflected in rate mitigation to customers is estimated to be $700 million and is subject to collection of the corresponding gross amount from Toshiba.

51. To mitigate the impact on retail electric customers' rates, SCE&G requests that the Commission authorize and direct it to apply up to $700 million of the net amount of the anticipated Toshiba guaranty settlement payments as a direct reduction to retail electric rates through the BLRA Decrement Rider. The annual amount of the net anticipated Toshiba guaranty settlement payments to be used for rate mitigation in any year shall be the amount necessary to mitigate rate increases during that year.

52. SCE&G requests the Commission to authorize and direct it to:

a. Record the amount of anticipated Toshiba guaranty settlement payments as a regulatory liability (the "Toshiba Guaranty Account");

b. Apply any payments made to contractors and subcontractors to extinguish liens and other claims predating the Westinghouse bankruptcy against that regulatory liability;

c. Determine, as of the date of the 2017, Revised Rates Order and each year thereafter the amount from the Toshiba Guaranty Account (the "Toshiba Decrement Amount") required to offset rate increases to retail electric customers during that year;

d. Flow this amount back to retail electric customers beginning with the effective date of the 2017, Revised Rates Order through a decrement rider to retail electric rates (the "BLRA Decrement Rider");

e. Provide written notice to the Commission and South Carolina Office of Regulatory Staff of the annual amount constituting the Toshiba Decrement Amount and setting forth in detail the calculation by which it was derived;

f. Adjust the BLRA Decrement Rider each year to reflect a rate reduction equal to the Toshiba Decrement Amount for that year;

g. Amortize the balance in the Toshiba Guaranty Account to Account 407.4 – Regulatory Credits in ratable monthly increments reflecting the amount of the Toshiba Decrement Amount for that year;

h. Cease all rate mitigation once the net amount in the Toshiba Guaranty Account up to $700 million has been expended; and

i. Maintain, as a regulatory liability, any balance in the Toshiba Guaranty Account for use as directed by the Commission in future proceedings.

Replacement Capacity

53. Abandonment of the Units will require SCE&G to replace the capacity that they represent with other generation assets, specifically natural gas generation facilities, or by purchasing capacity. SCE&G is currently bridging its customers' requirements with a capacity purchase in the amount of approximately 300 megawatts through 2019.

54. SCE&G requests that the Commission direct it to defer as a regulatory asset for future recovery through rates any costs associated with current and future replacement capacity. These costs include the depreciation, taxes, insurance and other operating and maintenance costs associated with generation assets necessary to replace the capacity that would otherwise be provided by the Units. These costs may also include costs associated with any purchased capacity obtained to replace the capacity that would otherwise be provided by the Units. SCE&G requests the Commission to authorize it to accrue carrying costs on the balance in this regulatory asset at its weighted average cost of long term debt.

55. SCE&G anticipates ceasing this deferral and carrying costs accrual when it seeks recovery for these amounts in future retail electric rate proceedings. In the interim, SCE&G asks that the Commission authorize and direct it to apply the amounts currently

being employed to amortize the deferred cost of capacity purchases under Order No. 2013-649 to amortize the balance in this new regulatory asset account once the regulatory assets established under that order are fully amortized. The amount currently being used to amortize capacity purchase costs under Order No. 2013-649 is approximately $10.8 million annually.

Project Costs Incurred after September 30, 2017

56. To provide for the recovery of abandonment costs under S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-33-280(K), SCE&G asks that the Commission allow it to defer as a regulatory asset for future recovery in rates all costs incurred after September 30, 2017, that are associated with the Units or the cancellation of the Units, including without limitation costs associated with demobilization; removal; site restoration; salvage; storage, maintenance, and insuring of salvageable items; preparation of such items for sale and the costs of their inventorying, marketing, transportation and sale; payment of contractors and subcontractors; defending, compromising or satisfying contractors' and subcontractors' suits, liens and claims as well as the cost of defending or asserting other claims, suits and liens associated with the project, including in all cases reasonable attorneys' fees and other costs; sales and property taxes; permanent state and federal income tax items: the cost of maintaining, closing and cancelling permits; and other costs that would be considered costs of the plant under S.C. Code Ann. § 58-33-210 ("Future Abandonment Costs").

57. SCE&G requests that carrying costs accrue to this account at SCE&G's weighted average cost of long-term debt. SCE&G anticipates ceasing this accrual and seeking rate recovery for these Future Abandonment Costs in future proceedings under S.C. Code Ann. §§ 58-33-270(E) and 58-33-280(K) or under S.C. Code Ann. §§ 58-27-810 *et seq.*

Miscellaneous Tax Related Accounting Matters

58. The decision to abandon construction of the Units will change SCE&G's tax position in ways that will require additional accounting adjustments. SCE&G requests that the Commission:

a. Affirm that the deferral of the cost of benefits lost under Section 199 of the Internal Revenue Code, 26 U.S.C.A. § 199, as authorized in Order No. 2016-820, shall apply to benefits lost as a result of the abandonment of the Units.

b. Authorize SCE&G to defer as a regulatory asset the tax impacts of recording the deferred income tax ("ADIT") liabilities related to the equity component of the allowance for funds used during construction ("AFUDC") which will be required upon the transfer of the costs of the Units to the Capital Cost Account. SCE&G requests authorization to amortize this amount to rates over 60 years beginning with next retail electric base rate order under S.C. Code Ann. §§ 58-27-810, *et seq.*

Other Required Deferrals

59. SCE&G further requests authorization from the Commission:

a. To remove from retail electric rate base the costs associated with nuclear fuel that was acquired or was being fabricated in anticipation of the construction of the Units and directing that any gain or loss on the sale of that fuel be deferred as a regulatory liability or asset for refund or recovery in future rate proceedings with carrying costs at SCE&G weighed average cost of long-term debt.

b. To continue accruing carrying costs on ADIT assets arising from tax capitalized interest until the balance of the ADIT assets are fully offset by ADIT liabilities, as is presently permitted, or until the implementation date of the 2017, Revised Rates Order, if later.

c. To supplement and amend provisions of Order No. 2013-776 concerning the gains or losses and other costs associated with the certain interest rate swap agreements which SCE&G obtained to lock in interest rates for debt it planned to issue to finance completion of the Units. SCE&G requests authority to defer as a regulatory asset for recovery in a future rate proceeding the associated costs which are not already being amortized and for those costs to begin being amortized over 50 years beginning at the time SCE&G next issues debt, regardless of the tenor of such debt. Any gains on the termination of active swaps shall be applied as credits to fuel costs, as is currently allowed under Order No. 2013-776.

IV. LEGAL STANDARDS AND CONCLUSIONS

60. Pursuant to S.C. Code Ann. § 58-33-270(E), when a utility petitions for adjustments in the construction schedule or capital cost schedule for a plant being constructed under the BLRA, the Commission "shall grant the relief requested if, after a hearing, the commission finds: (1) as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the utility . . . ."

61. Pursuant to S.C. Code Ann. § 58-33-280(K), "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. Without limiting the effect of Section 58-33-275(A), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. The commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article."

62. SCE&G's actions associated with the Units and the decision to abandon them have been reasonable and prudent.

V. REQUEST FOR RELIEF

WHEREFORE, South Carolina Electric & Gas Company respectfully requests that the Commission set the current matter for hearing and thereafter, pursuant to S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-33-280(K),

A. Approve the schedule of capital costs attached as ***Exhibit 1*** as the operative schedules for capital cost of the Units in abandonment under S.C. Code Ann. § 58-33-275(A) and S.C. Code Ann. § 58-33-280(K).

B. Affirming under S.C. Code Ann. § 58-33-280(K), that SCE&G's decision to abandon continued construction of the Units as of July 31, 2017, is reasonable and prudent.

C. Authorize SCE&G to calculate a Revised Rates Charge consistent with the terms of this Petition for presentation in its 2017, Revised Rates Proceeding under S.C. Code Ann. § 58-33-280.

D. Order and direct SCE&G to implement the accounting matters set forth in this Petition including those associated with:

   a. Transmission Projects;

   b. The Capital Costs of the Units;

   c. The Revised Rates Charge;

   d. The Toshiba Guaranty Settlement Amounts;

   e. Future Costs of Abandonment;

f. Swaps; and

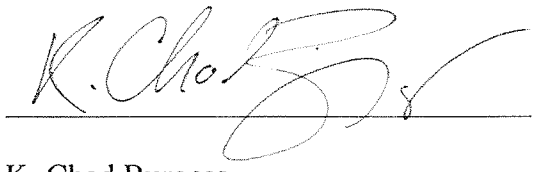
g. Other accounting orders or directives as may be necessary or useful to effectuate the abandonment of the matters proposed here.

E. Terminate the requirement that SCE&G provide the semi-annual update on construction progress as required by Order No. 2016-794.

F. Acknowledge that with the cession of construction the filing of quarterly reports on construction progress is no longer required under S.C. Code Ann. § 58-33-277 and Order No. 2009-104(A).

G. Grant other relief as may be appropriate.

Respectfully submitted,



K. Chad Burgess
Matthew W. Gissendanner
South Carolina Electric & Gas Company
Mail Code C222
220 Operation Way
Cayce, SC 29033
(803) 217-8141
chad.burgess@scana.com
matthew.gissendanner@scana.com

Mitchell Willoughby
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
(803) 252-3300
mwilloughby@willoughbyhoefer.com

Belton T. Zeigler
Womble Carlyle Sandridge & Rice, LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-7720
belton.zeigler@wcsr.com

Attorneys for South Carolina Electric & Gas Company

Cayce, South Carolina

Date: August 1, 2017

Exhibit 1

RESTATED and UPDATED CONSTRUCTION EXPENDITURES

(Thousands of $)

V.C. Summer Units 2 and 3 - Summary of SCE&G Capital Cost Components

Actual through June 2017* plus Projected through September 30, 2017

		Actual										Projected
Plant Cost Categories	**Total**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
Fixed with No Adjustment	1,787,139	4,628	35,199	22,066	67,394	50,551	66,057	22,960	11,634	366,348	727,099	413,204
Firm with Fixed Adjustment A	266,750	-	-	63,250	27,500	24,200	75,075	42,900	7,700	26,125	-	-
Firm with Fixed Adjustment B	238,868	-	5,499	35,768	49,513	39,371	45,043	31,048	22,834	9,791	-	-
Firm with Indexed Adjustment	873,741	-	45,869	148,713	115,172	137,871	118,769	150,530	129,994	26,822	0	-
Actual Craft Wages	133,306	-	312	1,937	9,779	11,682	21,091	25,217	38,785	24,503	0	-
Non-Labor Costs	406,936	-	1,271	31,255	79,778	9,298	65,227	70,154	105,390	44,564	(0)	-
Time & Materials	15,786	-	1,013	155	1,004	764	1,878	2,300	4,055	2,048	2,461	109
Owners Costs	635,382	17,096	8,198	15,206	23,743	29,276	43,643	47,245	51,807	56,885	73,152	269,131
Transmission Costs	260,802	-	26	724	927	11,964	51,677	56,593	46,439	44,401	31,412	16,639
Total Base Project Costs(2007 $)	4,618,710	21,723	97,386	319,073	374,810	314,977	488,461	448,947	418,639	601,486	834,124	699,083
Total Project Escalation	440,344	-	3,519	20,930	23,741	34,084	74,485	88,622	93,326	54,891	18,156	28,590
Total Revised Project Cash Flow	5,059,054	21,723	100,905	340,003	398,551	349,061	562,946	537,569	511,965	656,378	852,280	727,673
Cumulative Project Cash Flow(Revised)		21,723	122,629	462,632	861,183	1,210,244	1,773,190	2,310,759	2,822,724	3,479,101	4,331,382	5,059,054
AFUDC(Capitalized Interest)	198,489	645	3,497	10,564	17,150	14,218	18,941	27,722	26,131	22,202	30,817	26,603
Gross Construction	5,257,543	22,368	104,403	350,567	415,701	363,278	581,886	565,291	538,096	678,580	883,097	754,276
Construction Work in Progress		22,368	126,771	477,338	893,039	1,256,317	1,838,203	2,403,495	2,941,590	3,620,170	4,503,268	5,257,543

*Applicable index escalation rates for 2017 are estimated. Escalation is subject to restatement when actual indices for 2017 are final.

Notes:

Current Period AFUDC rate applied: 6.06%

Escalation rates vary from reporting period to reporting period according to the terms of Commission Order 2009-104(A).
These projections reflect current escalation rates. Future changes in escalation rates could substatially change these projections.
The AFUDC rate applied is the current SCE&G rate. AFUDC rates can vary with changes in market interest rates,
SCE&G's embedded cost of capital, capitalization ratios, construction work in process, and SCE&G's short-term debt outstanding.

EXHIBIT

2

SECOND SUPPLEMENTAL REBUTTAL TESTIMONY OF PRABIR PUROHIT ON BEHALF OF DOMINION ENERGY, INC. DOCKET NO. 2017-370-E

Q. PLEASE STATE YOUR FULL NAME, BUSINESS ADDRESS, AND OCCUPATION.

A. My name is Prabir Purohit and my business address is 120 Tredegar Street, Richmond, Virginia 23219. I am the Director of Mergers and Acquisitions and Financial Analysis at Dominion Energy, Inc. ("Dominion Energy").

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CASE?

A. Yes, I filed rebuttal testimony on behalf of Dominion Energy in Docket No. 2017-370-E on October 24, 2018. I also filed supplemental rebuttal testimony on behalf of Dominion Energy in Docket No. 2017-370-E on October 25, 2018.

Q. WHAT IS THE PURPOSE OF YOUR SECOND SUPPLEMENTAL REBUTTAL TESTIMONY?

A. The purpose of my second supplemental rebuttal testimony is to present and discuss an Alternative Levelized Customer Benefits Plan (the "Levelized Plan" or "Plan B-L") associated with the proposed merger developed by Dominion Energy and South Carolina Electric & Gas Company's ("SCE&G") parent, SCANA Corporation ("SCANA"), that the Joint Applicants would accept as an outcome in this proceeding in response to (1) calls by stakeholders to consider a retail electric

rate close to the experimental rate authorized by Act 258 / H. 4375 as a potential remedy in this case, and (2) suggestions by Office of Regulatory Staff ("ORS") witness Lane Kollen that the Commission adopt an approach where the recovery of the allowed New Nuclear Development ("NND") abandonment cost is levelized over the entire twenty year recovery period. I also, in response to a request from the ORS, present a consolidated list of merger-related conditions proposed by the Joint Applicants. The specific terms of the Levelized Plan are attached as Exhibit ___ (PP-1A).

THE LEVELIZED PLAN

Q. WOULD YOU PLEASE DISCUSS THE LEVELIZED PLAN AND EXPLAIN WHY YOU ARE PRESENTING IT?

A. Yes. On September 24, 2018, the ORS filed its testimony in this docket and recommended a plan that provides no upfront cash refund to customers, but instead provides lower bills going forward. Since that time, a number of parties to the case have expressed an interest in seeing an alternative plan from the Joint Applicants that does something similar to the ORS plan; that is, lower bills over time in lieu of upfront cash refunds. As a result, we developed the Alternative Customer Benefits Plan (the "Alternative Plan" or "Plan B"), which I described in my supplemental rebuttal testimony on behalf of Dominion Energy in Docket No. 2017-370-E on October 25, 2018. That produced a typical residential bill estimated to be approximately $126.96 per month, or approximately $1.62 above the temporary Act 258 / H. 4375 experimental bill level of approximately $125.34 per month. Since then, we have further revised the Alternative Plan to address the suggestions from

stakeholders and policy makers involved with this proceeding concerning the wisdom of the General Assembly's experimental rate as a benchmark in this case, as well as the recommendation from ORS witness Lane Kollen that the recovery of allowed NND costs be levelized over the twenty-year recovery period in order to minimize recovery in the initial years and to fix recovery at the same level each year. In order to accommodate both of these objectives, we have developed the Levelized Plan, or Plan B-L. While it is a further concession, this Levelized Plan has also been developed in a way that preserves the merger economics of the Customer Benefits Plan so it is possible for Dominion Energy to close the merger.

Q. FOR COMPARISON PURPOSES, WHAT ARE THE KEY FEATURES OF THE ALTERNATIVE CUSTOMER BENEFITS PLAN THE JOINT APPLICANTS FILED ON OCTOBER 25, 2018?

A. The Alternative Customer Benefits Plan would provide a total of $1.91 billion in refunds over a twenty-year NND recovery period, would recover $2.772 billion (less adjustment for deferred taxes) of NND capital costs at a 9.9% ROE and a 5.56% cost of debt, and would have a targeted capital structure comprised of 52.81% equity and 47.19% debt. As discussed below in my testimony, however, the Joint Applicants agree to lower the $2.772 billion to approximately $2.768 billion to reflect the agreed upon excluded amounts as set out in the consolidated merger conditions attached as Exhibit No. ___ (PP-4A).

Q. AND HOW DOES THE LEVELIZED PLAN DIFFER?

A. The Levelized Plan would provide a total of $2.039 billion in refunds over a twenty-year NND recovery period. The annual refunds in the Levelized Plan are

shaped in such a manner that a fixed and equivalent amount of NND revenue is collected from customers each year for twenty years. As noted, the Levelized Plan would recover $2.768 billion (less adjustment for deferred taxes and reflecting the excluded amounts as set out in the consolidated merger conditions) of NND capital costs over twenty years. All other rate making constructs of the Levelized Plan are the same as those proposed in the Alternative Customer Benefits Plan: NND capital costs are to be recovered at a 9.9% ROE and a 5.56% cost of debt, and would have a capital structure comprised of 52.81% equity and 47.19% debt.

Q PLEASE ELABORATE ON THE $2.039 BILLION IN REFUNDS THAT YOU REFERENCED.

A. Approximately $1.032 billion of this amount will be refunded to customers over the twenty-year NND cost recovery period as shown in Exhibit No. ___ (PP-2A), with a greater amount refunded in the earlier years and a smaller amount refunded in the later years to achieve the goal of levelized bills. As in Plan B, this amount is equal to the retail portion of the net proceeds of SCANA's settlement with Toshiba Corp. Payment of these funds to customers will decrease the regulatory liability recorded by SCE&G associated with the Toshiba settlement over twenty years on a set schedule as seen in Exhibit No. ___ (PP-2A).

Approximately $1.007 billion of this amount will provide a refund of certain amounts previously collected under the South Carolina Baseload Review Act. SCE&G will establish a $1.007 billion regulatory liability for refunds of amounts previously collected from customers, which will be credited to customers over approximately eleven years. Similar to Plan B, the additional $1.007 billion

refunded compensates customers for the time value of money associated with paying the amounts equivalent to Toshiba over the twenty-year period. In consideration of these benefits, no rate base reduction or offset shall be recognized for the unamortized balance of the $2.039 billion in refunds described above.

Q. WHAT IS THE IMPACT OF THESE CHANGES ON CUSTOMER BILLS UNDER PLAN B-L?

A. These changes produce a significant bill reduction of approximately *15%* relative to May 2017 bill levels. The present typical residential bill under Act 258 / H. 4375 is approximately $125.34 per month. Plan B-L would reduce that slightly to approximately **$125.26 per month** for the typical residential bill, inclusive of NND amortization and the impacts of the Tax Cut and Jobs Act of 2017 ("TCJA"). A roughly similar percentage bill reduction would result for the commercial and industrial rate customers and, of course, any individual customer may see higher or lower percentage and dollar savings depending on the rate schedule and unique usage profile of the customer.

Q. MR. KOLLEN WAS CRITICAL OF PLAN B BECAUSE HE BELIEVED IT TO HAVE AN INFERIOR NET PRESENT VALUE ("NPV") TO CUSTOMERS AS COMPARED TO DOMINION ENERGY'S ORIGINAL CUSTOMER BENEFITS PLAN ("PLAN A"). HOW DOES THE LEVELIZED PLAN COMPARE TO PLAN A ON AN NPV BASIS?

A. Compared to the original Customer Benefits Plan, the Levelized Plan reduces the net present value customers would pay over twenty years by about $50 million (from about $1.010 billion in Plan A to about $962 million in the Levelized Plan),

resulting in a better NPV for customers than either Plan A or Plan B. While the Company does not agree that NPV comparisons are the sole factor for the Commission to consider in evaluating potential solutions to the NND dilemma, given Mr. Kollen's criticism, we are presenting this updated NPV analysis. Detailed work papers of the original Customer Benefits Plan, the Alternative Plan, and the Levelized Plan are attached in Confidential Exhibit No. __ (PP-3A).

Q. ARE CUSTOMERS PAYING MORE UNDER PLAN B-L THAN UNDER PLAN B?

A. No. They are actually paying approximately $130 million less under Plan B-L than under Plan B, in nominal dollars. The timing of the recovery under Plan B-L allows a lower recovery amount in the early years of the amortization period, which also improves the NPV for the customer.

Q. HOW DID YOU DETERMINE WHAT CHANGES TO MAKE TO THE ALTERNATIVE CUSTOMER BENEFITS PLAN TO DEVELOP THE LEVELIZED PLAN?

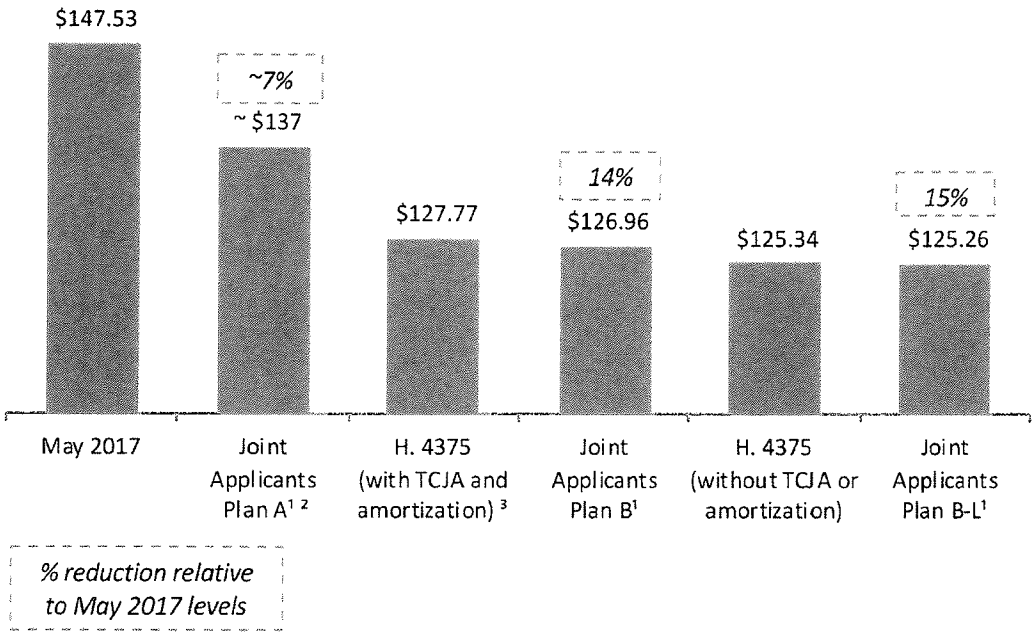
A. In developing the Levelized Plan, our focus was on changes we could make to meet the objective of a level bill each year, while preserving the merger economics of the original Customer Benefits Plan. As we have always said, we believe we can provide benefits to customers through the merger that will not otherwise be available absent the merger. And we have also said that, while we would still support the Customer Benefits Plan with the upfront cash refund, we remain open to moving elements of the plan around to optimize the plan for customers and to be responsive to the preferences of stakeholders and the

Commission in this case, and will "own" whichever proposed benefits plan, if any, the commission approves. But in so doing, we also have a fiduciary responsibility to our shareholders to maintain the economics of the merger. And that is what we have sought to accomplish in making adjustments to the original Customer Benefits Plan and the Alternative Plan to develop the Levelized Plan.

Q. MR. PUROHIT, HAVE YOU COMPARED THE ESTIMATED TYPICAL RESIDENTIAL ELECTRIC BILL OF $125.26 UNDER THE LEVELIZED PLAN TO BENCHMARK BILL LEVELS AND PEER UTILITY BILL LEVELS?

A. Yes, Table 1, below, shows the comparable typical residential bills for SCE&G as of May 2017, under Customer Benefits Plans A, B, and B-L, and bills under Act 258 / H. 4375 as it exists today and as calculated by SCE&G witness Rooks, inclusive of TCJA impacts and NND amortization amounts. Table 1 illustrates how the typical residential bill under Customer Benefits Plan B-L would be 15% below the May 2017 rate level and slightly below the Act 258 / H. 4375 level.

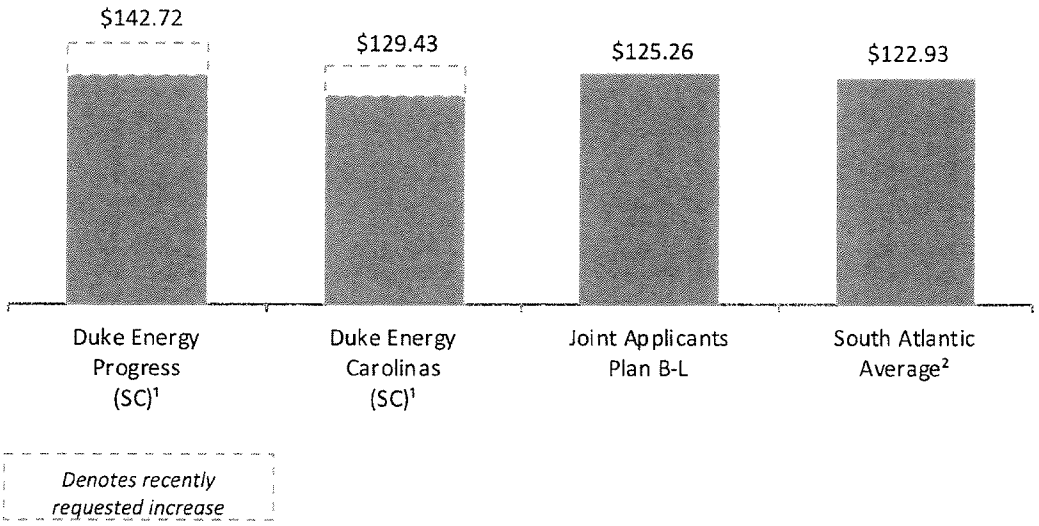
Table 1: Comparison of Estimated Typical Residential Electric Bill by Joint Applicant Merger Plan and to Experimental Rates



[1] Inclusive of estimated tax reform impacts and relative to May 2017 bill [2] Average Year 1 and Year 2 impact [3] Includes impact of $2.772B capital costs amortized over 20 years and ORS Optimal Plan assumption of $98.7M TCJA benefit

In addition, Table 2, below, compares the typical residential bill levels under Plan B-L to the South Atlantic region utility average and to the rates (current and proposed) of SCE&G's peer South Carolina utilities. Table 2 illustrates how the Plan B-L typical residential bill will be below SC peers and only slightly above the South Atlantic average. We also estimate commercial rates under the Customer Benefits Plan B-L would be about 2-5% above the South Atlantic average and about 15% below the South Atlantic average for industrial rates.

Table 2: Comparison of Joint Applicants Plan B-L to Peer Averages of Typical Residential Bills (1,000 kWh)



[1] Source: Duke Energy fact sheet [2] EEI Typical Bills and Average Rates Report - Winter 2018

Q. DO THE TERMS OF PLAN A, PLAN B, OR PLAN B-L CONSTITUTE THE ECONOMIC LIMIT OF BENEFITS WHICH THE JOINT APPLICANTS CAN ACCEPT IN ORDER TO PRESERVE THE MERGER ECONOMICS?

A. Yes, they do. Any of these three plans will provide approximately $4 billion or more in direct customer benefits and concessions – an unprecedented proposal in a proceeding such as this one. The alternative "ORS Optimal Plan," by contrast, remains an unacceptable outcome that would prevent the merger from closing.

Q. IN PARTICULAR, ARE THE TERMS OF THESE CUSTOMER BENEFITS PLANS ON THE ISSUES OF THE TCJA SAVINGS AND MERGER-RELATED SAVINGS NECESSARY IN ORDER FOR THE MERGER

ECONOMICS TO BE PRESERVED?

A. Yes, they are, in the context of the overall benefits packages. As the evidence has demonstrated, our proposal on TCJA savings fairly and equitably ensures that customers will get the benefit of federal tax reform going forward. The ORS proposal promises marginally lower rates in the short term due in part to a more accelerated unprotected excess deferred tax amortization period, but under their plan the revenue requirement would increase in approximately five years due to expiration of unprotected excess deferred tax amortization. The Joint Applicants' plans appropriately match the tax benefits to the life of the underlying assets and prevent tomorrow's customers from paying for today's customers' benefits, as Dominion Energy witness Warren has discussed. In any event, the ORS tax proposal would upset the economic balance of the Customer Benefit Plans necessary to close the merger.

Likewise, Dominion Energy has fairly and reasonably proposed to capture merger-related savings for the benefit of customers in the process of the next general rate case in 2020. Our updated merger conditions mandate the timing of this rate case to ensure that these benefits are passed on to customers in a timely fashion. Dominion Energy's objections to the ORS proposal to immediately build into rates a drastic 33% reduction to service company expense levels have been thoroughly discussed in this proceeding. And, like the ORS TCJA proposal, such an amendment to the Customer Benefit Plans package terms would upset their necessary economic balance and would prevent us from being able to close the merger.

Of course, these statements are not ultimatums to the Commission, the ORS,

or any other party. We merely need to be clear as to the balance required on these issues from Dominion Energy's perspective, and of course respect the Commission's authority to consider, evaluate, and decide upon them.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THE LEVELIZED PLAN.

A. While the Joint Applicants continue to support the original Customer Benefits Plan, including upfront cash refunds of $1.3 billion, we have developed a Levelized Plan that more than doubles the percentage bill reduction to a level which we believe will provide SCE&G customers with competitive rates, while preserving a healthy utility able to continue to serve the needs of customers, the communities and the State of South Carolina. If the Commission opts for lower bills in lieu of upfront cash refunds, we believe either the Alternative Customer Benefits Plan or Levelized Plan strikes the appropriate balance between reasonably minimizing bills for customers, retaining the merger economics for Dominion Energy shareholders, and preserving the financial health of the utility, and both would be acceptable outcomes to the Joint Applicants if the merger is approved and that the Joint Applicants would support. The Plan B-L, in particular, is being offered in response to suggestions from key stakeholders that the temporary rate in Act 258 / H. 4375 is an optimal target, and one which has, to date, withstood legal challenge.

MERGER COMMITMENTS

Q. DURING THE COURSE OF THESE PROCEEDINGS, THE ORS HAS REQUESTED IF DOMINION ENERGY WAS WILLING TO PRESENT THE MERGER CONDITIONS THAT THE JOINT APPLICANTS WOULD ACCEPT IN A CONSOLIDATED FORMAT. IS DOMINION ENERGY

WILLING TO DO SO?

A. Yes. Attached as Exhibit No. ___ (PP-4A) is such a consolidated list. This list includes the proposed merger conditions as presented in the Joint Application. It also includes additional merger commitments that the Joint Applicants are willing to accept based on discussions with the parties and Commissioners' comments during the course of the evidentiary hearing.

Q. COULD YOU BRIEFLY DETAIL THE RECENT ADDITIONAL MERGER COMMITMENTS YOU DESCRIBE?

A. Yes, they include agreement to:

- Department of Defense and Federal Agencies bill credits
- Extending non-executive employee pay protection to July 1, 2020
- Consumer education program on benefits plan implementation
- Bill credits to SCE&G natural gas customers for refunds of 2017 revenues
- Open and transparent communication with the Commission and ORS
- Funds in the "Rabbi Trust" for senior management payments will not be included in any future cost of service
- Senior management bonus payments charged to the NND Project will be excluded from NND rate base and not included in a future cost of service
- Cost of Bechtel report will not be included in rate base / cost of service
- Timmerman consulting payments will be excluded from rate base / cost of service
- Civil litigation defense expenses associated with the merger and NND

abandonment will not be included in rate base / cost of service

- The President of SCE&G will continue to be a South Carolina resident with his/her primary office in Cayce

Q. DOES THIS CONCLUDE YOUR SECOND SUPPLEMENTAL REBUTTAL TESTIMONY?

A. Yes, it does.

EXHIBIT 3

Message

From: Kizer, Richard [richard.kizer@santeecooper.com]
Sent: 8/2/2017 3:51:25 PM
To: Kizer, Richard [richard.kizer@santeecooper.com]
BCC: Kizer, Richard [richard.kizer@santeecooper.com]
Subject: Marsh employee note August 2nd

Update on nuclear announcement

The past couple of days have been difficult for our employees, our customers, and the communities we serve in South Carolina. I want to update you on some of the things that have occurred since we announced on Monday afternoon our decision to file for abandonment of our nuclear construction project at V.C. Summer Station.

An unfortunate but unavoidable task we had before us was to begin closing down the site. Our construction contractor, Fluor, immediately began demobilization of approximately 5,100 construction workers involved with the project.

We also immediately began efforts to manage the transition of approximately 600 SCE&G new nuclear employees. I appreciate and share your concern and compassion for your fellow employees, and I assure you that we are doing all that we can to support the affected employees through this transition. Their employment continues through the end of September. While they may not necessarily report to work that entire time, their pay and benefits will continue during the next 60 days. On Monday, they were provided details of their personal severance benefits, which would take effect after Sept. 30 to help them transition to new employment. We've partnered with a company that specializes in career management services, and they are on site at VCS to provide support with resume development, career coaching, self-marketing strategies, and networking to other opportunities. We're also looking internally at all open positions and will be giving priority consideration to Units 2 and 3 employees who apply for these jobs.

Late Monday afternoon, Jimmy Addison and I participated in a call with financial analysts, giving them an overview of our decision and answering their questions. The market seemed to react positively once we had a chance to give analysts a little more clarity regarding the reasons for our decision and our focus moving forward. Here is atranscript of that call.

Yesterday, in an allowable ex parte communication briefing before the Public Service Commission, Steve Byrne, Jimmy Addison and I provided members of the Commission with an overview of our decision to file for abandonment of our nuclear construction project, and we answered questions they had about the decision. Here is a transcript of that proceeding.

Later in the afternoon, we filed a petition with the Commission seeking an order determining that our decision to abandon the project is reasonable and prudent. The Commission will consider that petition as part of a public hearing that has yet to be scheduled, but will likely take place in late fall.

The petition is not a request to revise rates. However, it does outline SCE&G's proposed strategy for easing the impact of our decision on customer rates. That strategy includes using all of the net proceeds of the anticipated Toshiba guarantee settlement payments (estimated to be $700 million) to help to mitigate future bills to customers as part of our plan of abandonment.

Understandably, there is frustration amongst our customers. We're disappointed to have to come to this point to file for abandonment. I want to reiterate that we had secured a fixed-price option to help protect our customers. However, when Westinghouse filed for bankruptcy, the benefits of the fixed-price contract were eliminated, which is what led us into a comprehensive evaluation of the most prudent path forward for the project.

Our evaluation determined that it would cost too much and take too long to complete both units. Our evaluation team forecasted that the cost at completion for both units would be $9.9 billion – approximately $2.2 billion more than the cost approved by the PSC in its most recent order. Our estimate of the additional costs to complete the Units was approximately three times what Westinghouse had provided us at the time of its bankruptcy filing. Even after factoring in the parental guarantee, the resulting increase would have been approximately $1.1 billion. Our evaluation team also arrived at substantial completion dates of Dec. 31, 2022 for Unit 2 and March 31, 2024 for Unit 3 – several years beyond Westinghouse's previous estimate.

While it may have been possible to complete construction of only one unit, Santee Cooper's decision to suspend funding of construction took that option off the table, and we were unable to move forward on our own.

Some customers have asked if the company will issue "refunds" to customers for money already spent. The project-related costs already reflected in customers' bills were prudently incurred and approved by the PSC and will not be refunded. However, as I mentioned, we are doing all we can to reduce the impact to future bills. We will flow 100% of net proceeds from the Toshiba parental guarantee to offset impacts.

Tomorrow, we will host our quarterly earnings call, which will give us another opportunity to communicate with the investment community about where we stand today, and our focus moving forward. I encourage you to tune in to the webcast of that call, which begins at 3 p.m.

We understand that this decision will continue to impact the lives of many people for some time. We are committed to doing all we can to be supportive through that process. In the meantime, I know our SCE&G employees will remain dedicated to providing families and businesses we serve with safe, reliable energy they need to support their daily lives in South Carolina.

Sincerely,

Richard Kizer

EXHIBIT 4

BELL LEGAL GROUP, LLC

LIMITED LIABILITY COMPANY

219 NORTH RIDGE STREET
POST OFFICE BOX 2590
GEORGETOWN, SOUTH CAROLINA 29442
TELEPHONE (843) 546-2408
FAX (843) 546-9604

CONTINGENCY FEE CASE
ATTORNEY/CLIENT FEE AGREEMENT

I, Phillip and Karla Cooper ("**Client(s)**"), hereby retain **BELL LEGAL GROUP, L.L.C., GALVIN LAW GROUP, L.L.C., SAVAGE, ROYALL & SHEHEEN, L.L.P., AND COLEMAN & TOLEN, L.L.C. (hereinafter referred to as "Attorneys")**, to represent me in the following legal matters/claims: _____. Attorneys will not perform legal services other than those specified above without consultation with and authorization from the Client. I understand and agree that in retaining **"Attorneys"**, I authorize any member, employee, and/or contractor of the firm to perform any legal services which may be necessary to represent my interest. I understand **"Attorneys"** make no warranties, promises, or representations with respect to the success of this matter, the favorable outcome of any legal action that may be filed, or the recovery and/or reimbursement of any costs or expenses.

Attorneys shall have the right to withdraw from this Matter by mailing a notice to Client at his/her last known address for any reason to include, but not limited to, failure of Client to comply with the terms of this agreement or to cooperate with Attorneys in the prosecution and investigation of this Matter, or, if in the opinion of Attorneys during any stage in the proceeding, the Matter appears to be inequitable, non-merited, economically unfeasible, or not worthwhile to pursue.

Client authorizes and directs Attorneys to take all actions which Attorneys deem advisable on Client's behalf in this Matter. Attorneys agree to notify Client promptly of all significant developments and to consult with Client in advance as to any significant decisions attendant to those developments.

Client authorizes Attorneys in *their* own discretion to associate additional attorneys to assist them in the performance of the legal services to be performed for Client as set forth herein. Unless agreed upon by Client, no additional legal fees will be charged to Client in such event. Any of Client's attorneys of record may be designated to appear on my behalf or to undertake my representation in this matter.

Client agrees to perform the following functions:

- To pay Attorneys for the performance of such legal services, and to pay for all expenses incurred in connection therewith, as specified more fully below.
- To cooperate fully with Attorneys and to provide all information known by or available to the Client which may aid Attorneys in representing the Client in this Matter.

Client understands that he/she must compensate Attorneys for the legal services provided, as set forth more fully below:

CONTINGENCY FEE

"Attorneys" agree to handle this legal matter on a contingent fee agreement. This contingency fee shall be computed as follows:

Forty percent (40%) PWCS KBC *(initial)*. upon the filing of a summons and complaint in any court, thereby initiating litigation and the matter is settled before the actual trial of said matter, and **forty-five percent (45%)** PWCS KBC *(initial)* if an actual trial is required.

Client agrees to pay CONTINGENCY FEES *in addition to the applicable costs and expenses*, as more fully outlined below. In addition, if the Matter is FILED AND/OR litigated, Client agrees to pay *Paralegal/legal assistant fees* at a rate of *$80/hour* for trial preparation and any other specialized work that is needed to pursue this Matter.

It is further agreed and understood that Attorney's scope of representation is representing Client through the conclusion of a trial or final hearing, if any, in this matter. In the event Client decides to appeal from any Order, decision, or verdict entered in this matter, Attorneys are not obligated under this Agreement to represent Client in any such appeal, unless a new and independent Agreement, upon terms mutually agreeable to both Client and Attorneys, is entered into between Attorneys and Client for Attorneys to undertake representation of Client in any such appeal. *This agreement in no way obligates Attorneys to proceed with an appeal.*

COSTS AND EXPENSES

Costs and expenses are different and separate from the Attorney Fees. Costs and expenses which are monies or services costing money advanced on your behalf in furtherance of this Matter. Client authorizes Attorneys to incur, and agrees to pay, all costs and expenses upon resolution of the case which, in Attorneys' sole discretion, may be incurred in order to properly investigate and prosecute the Claims, together with interest at the rate of 1-1/2% per month on all such amounts outstanding over 30 days. Costs and/or expenses may be advanced by Attorneys, and said advance shall be repaid to Attorneys by Client when billed, unless different arrangements are made, such as collection at time of settlement/verdict. Client agrees that, in addition to the above attorney fees, all costs and/or expenses incurred in the investigation and/or litigating of this Matter will be deducted form the proceeds of any recovery AFTER ATTORNEYS' FEES ARE CALCULATED. Attorneys will prepare a settlement statement and/or bill at the conclusion of the case outlining the receipts and disbursements in connection with the resolution of Client's case.

The Client further authorizes Attorneys to retain and agrees to pay the fees or charges of every other person or entity hired by Attorneys to perform necessary services related to the Matter, to include, but not limited to, court reporters, investigators, expert witnesses, engineers, consultants, printing costs, postage, Federal Express/UPS, general office expenses, commercial and/or private air and other attorneys hired for ancillary matters in other localities.

Client agrees and understands that he/she is responsible for all medical bills related to this accident and direct Attorneys to pay any outstanding medical bills at the time of disbursement. Client understands Attorneys must honor all statutory liens such as Medicaid, Medicare, and Worker's Compensation, in addition to liens that may have been placed on the case by his/her own medical and health insurance providers. Client further agrees that insurance information and settlement information will be made available to all lien holders upon request. Client gives permission to Attorneys to discuss his/her case with medical lien holders, as well as providing them with copies of the disbursement sheets if requested. Client agrees that Attorneys may release his/her medical records and medical bills to involved insurance companies and to opposing counsel, should a law suit be filed.

Client agrees that to secure payment by him/her to **"Attorneys"** of all expenses, court costs, and attorneys' fees that Client is obligated to pay under this retainer agreement, **CLIENT HEREBY GRANTS TO "Attorneys",** a retaining lien to his/her property in the firm's possession, and a charging lien applicable to any and all recoveries in this matter, whether by settlement, collection of judgment, or otherwise. If **"Attorneys",** are discharged prematurely, Client agrees that he/she will reimburse **"Attorneys"** for advanced costs, and will pay **"Attorneys",** a reasonable fee for services rendered on his/her behalf up to the time of discharge.

(SIGNATURES ON FOLLOWING PAGE)

PWC SF

KBC Client understands and agrees that he/she is willing to act as a class representative in the event that class action status is approved in this case. Client understands that he/she must act diligently and in the best interests of the Class and represent the interests of all class members.

_____ day of _____, 20__
_____, South Carolina

Karl Coger & Phillip Coger Sr.
Client

Bell Legal Group, L.L.C.

Galvin Law Group, LLC

Savage, Royall & Sheheen, LLP

Coleman & Tolen, LLC

482 Harbor Drive
Winnsboro SC 29180
(803) 422-2943

STROM LAW FIRM, L.L.C.

CONTRACT OF REPRESENTATION

I, LeBrian Cleckley, employ and retain the law firm of Strom Law Firm, L.L.C. and designated co-counsel to represent us as set forth herein.

1. SCOPE OF REPRESENTATION

Strom Law Firm, L.L.C. agrees to investigate and evaluate my possible claim or claims, against SCE&G and SCANA, for mismanagement of funds paid for plant investment.

After the investigation of my/our claim, Strom Law Firm shall have the right to withdraw and cancel this Contract if it is unable or unwilling to undertake the contemplated representation. Thereafter, if Strom Law Firm agrees to pursue this claim after investigation and evaluation, I employ and retain Strom Law Firm to pursue this claim after investigation and evaluation. I employ and retain Strom Law Firm to represent my interests in any and all actions, claims or trials proceedings related to the claims(s) referenced above.

2. AUTHORITY OF STROM LAW FIRM, L.L.C.

I empower Strom Law Firm, L.L.C. to take all steps in this matter deemed by them to be advisable for the investigation and handling of my claim(s), including hiring investigators, expert witnesses and /or other attorneys and filing any legal action necessary. During the term of representation, Strom Law Firm, L.L.C. is authorized and empowered to vote on my behalf in any bankruptcy proceeding or class action relevant to the scope of this representation. In addition, Strom Law Firm, L.L.C. is authorized and empowered to deposit checks made payable to the undersigned in order to disburse the settlement proceeds according to the terms of the representation

3. ATTORNEY'S FEE

It is understood and agreed that I am employing Strom Law Firm, L.L.C. as set forth herein, and that if no recovery is made, I will not owe Strom Law Firm, L.L.C. for any sums whatsoever as attorney's fees

In the absence of Court Order or administrative claim proceedings in which attorney's fees are otherwise governed, I agree to pay Strom Law Firm, L.L.C. an attorney's fee of forty percent (40%) of the gross amount of any settlement, verdict, or recovery obtained in my case for their legal services performed in all trial proceedings related to the claim(s) referenced above.

I understand that some portions of my case may be handled through class actions, court-approved settlements, administrative claims processing, or a result of bankruptcy proceedings, and that the attorney's fees to be paid to Strom Law Firm, L.L.C. in those situations will be as determined or awarded by order of the court or under the provisions of the court-approved settlement or administrative process. The amount of attorney's fees permitted under such group recovery varies in each instance, and Strom Law Firm, L.L.C. agrees to be bound by the amount of attorney' fees

awarded by the court or through the administrative claims procedure, but in no event shall attorneys fee should exceed the agreed-upon forty percent (40%).

If the provisions of this Contract regarding payment of attorney's fees are in conflict with any court order, settlement agreement, provisions of law or code of professional responsibility which dictates the amount of attorney's fee that may recovered, such court order, settlement agreement, provision of law or code of professional responsibility shall govern the recovery of attorney's fees under this Contract, but in no event shall attorneys' fees exceed the agreed-upon forty percent (40%).

I understand that attorney's fees will be calculated based on the gross amount of settlement, verdict or recovery, and the expenses which have been advanced will be deducted from the net proceeds payable to the client after the deduction of the attorney's fee.

I also understand that if any appeal is taken of any judgment obtained, a new separate agreement for fees and services shall be entered into by the parties.

4. ASSOCIATE COUNSEL

I specifically authorize Strom Law Firm, L.L.C. to associate co-counsel if Strom Law Firm, L.L.C. believes it advisable or necessary for the proper handling of my claim, and expressly authorize Strom Law Firm, L.L.C. to divide any attorney fee that may eventually be earned with co-counsel so associated for the handling of my claim. I understand that the amount of the attorney fees which I pay will not be increased by the work of co-counsel associated to assist with the handling of my claim, and that such associated counsel will be paid by Strom Law Firm, L.L.C., out of the attorney fee I pay to Strom Law Firm, L.L.C.

5. EXPENSES OF LITIGATION

Except as provided herein, I understand that during the term of representation my attorneys will advance all litigation expenses incurred on my behalf in this action, including, but not limited to, filing fees, service of process fees, medical record fees, court reporter expenses, investigation expenses, photographs and photo-reproduction expenses, and reasonable travel expenses, but that those expenses will be deducted from my net recovery of any settlement or recovered proceeds.

In the event no recovery is made, I understand that I owe Strom Law Firm, L.L.C. nothing and I have no obligation to reimburse Strom Law Firm, L.L.C., for expenses incurred in the litigation of my case.

In the event a settlement is made for less than a full resolution of the claim(s), I understand that some of my settlement proceeds may be used to finance the remainder of my case against other defendants which have additional potential liability. I agree that up to one-third of my portion of any partial settlement proceeds may be withheld as an advance for expenses incurred for prosecution of client's claim(s) against the remaining defendant(s).

I understand and agree that if the use of co-counsel is required by the court due to the

bankrupt status of a defendant, these co-counsel attorney fees will be treated as expenses that will be deducted from my net recovery of any settlement or recovered proceeds.

6. DISBURSEMENT OF PROCEEDS TO CLIENT

At the time of disbursement of any proceeds recovered on my behalf under the terms of this Contract, I will be provided with a detailed disbursement sheet reflecting the method by which attorney's fees have been calculated and the expenses of litigation which are due to Strom Law Firm, L.L.C., from the verdict or settlement proceeds.

7. SETTLEMENT DISCUSSION/GROUP SETTLEMENT

I will have the authority to accept or reject any final settlement amount after receiving the advice of my attorney. I understand that this suit may be handled as a part be handled as a part of a larger number of cases which may be aggregated for settlement and/or trial preparation. I authorize my attorneys to enter into aggregate settlement, the nature of my damages, and other facts relevant to evaluation of settlement values to other clients whose cases are included in the aggregate of cases. I also understand that certain expenses will be incurred in a joint effort to handle SCE&G and SCANA cases. I authorize my attorneys to prorate such joint expenses among all the cases in the settlement group.

8. NO GUARANTEE OF RECOVERY

I understand that no guarantee or assurances of any kind have been made regarding the likelihood of success of my claim, but that my attorneys will use their skill and diligence to diligently pursue my action.

9. TERMINATION OF REPRESENTATION

I understand I can terminate Strom Law Firm, L.L.C.'s representation of me at any time by written notice to Strom Law Firm, L.L.C. at the address of their principal office. Should I elect to terminate Strom Law Firm, L.L.C.'s representation prior to the full conclusion of Strom Law Firm, L.L.C.'s services under this contract, I understand and agree that Strom Law Firm, L.L.C. has a claim for expenses of litigation and unpaid attorney's fees which will become due upon receipt by me or by any successor attorney of any proceeds for any remaining portion of my Air Cargo claim. I understand that the obligation for unpaid attorney's fees will be calculated based on the percentage of work-in-progress completed to the case or claims(s) at the time Strom Law Firm, L.L.C. is released as my attorneys. Further, I understand that Strom Law Firm, L.L.C. may withdraw from their representation of me upon due and proper notice if Strom Law Firm determines that the prosecution of my claim is not feasible, worthwhile, or meritorious, or for any other reason permitted by the court or the applicable rules of professional conduct.

10. DISPOSITION OF FILE

The file and any materials compiled by Strom Law Firm during the course of my

representation will remain the property of Strom Law Firm upon the conclusion of the representation. Strom Law Firm will cooperate fully in furnishing a copy of relevant materials from the file to any successor attorney I may retain. I understand that, after my case is concluded, Strom Law Firm will maintain its file on this matter for at least six(6) years, but that after six years (6) years, Strom Law Firm will dispose of the file in accordance with its document retention policy. Should I wish to obtain any information or material from Strom Law Firm's file, including personal items furnished by me to Strom Law Firm to assist in the handling of my case, such as documents and family photographs, such information and materials will be returned to me upon my request, if the request is made within six (6) years after the conclusion of the representation.

11. OBLIGATIONS TO KEEP COUNSEL INFORMED

I understand that by entering into this Contract, Strom Law Firm and associated counsel may expend considerable effort and incur substantial expenses associated with pursuing my claim. I agree, therefore, to keep Strom Law Firm and/or associated counsel informed of the location where I can be reached. Further, in the event I am contacted by another attorney regarding this case or I am asked to any meeting held by attorneys other than class counsel, I will promptly inform Strom Law Firm and/or associated counsel of that occurrence.

Further, I will not discuss this case with another attorney or person without previously informing Strom Law Firm and/or associated counsel of my intentions. I understand that discussing this case with other people on a casual basis may result in a waiver of the attorney-client and/or work product privilege(s) and if my case is handled in a class action context, this could not only harm my case, but could also harm the cases of others.

I HAVE READ AND UNDERSTAND THIS CONTRACT AND AGREE AS STATED ABOVE THIS 11th DAY OF August, 20 17.

SIGNATURE

LeBrian Cleckley

NAME

118 Myers Creek Drive

STREET ADDRESS

Hopkins SC 29061

CITY STATE ZIP CODE

ldcleckley5@gmail.com

E-MAIL ADDRESS

ACCEPTED BY: _____

CONTRACT OF REPRESENTATION

The undersigned, RICHARD Lightsey, (hereinafter "Client") hereby employs and retains the A. G. Solomons, III (hereinafter "Lawyer") to represent its interest against who may be liable for the damages suffered by the Client as a result of SCE&G overcharing.

Client further authorizes Lawyer to employ such additional attorneys or experts as are deemed necessary to fully represent Client's interest.

Client hereby agrees to pay Lawyer an attorney's fee equal to one-third (33.333%) of any settlement, verdict, and/or recovery obtained in its case. Client further agrees to pay any and all litigation expenses out of any settlement, which include by explanation, but not limitation, filing fees, service fees, witness fees, expert witness fees, investigation expenses, photographs, photo reproduction expenses, and travel expenses.

Lawyer agrees not to enter into any final settlement or compromise of this matter without the prior consent of Client.

Client agrees with Lawyer not to make any settlement or take part in any settlement negotiations without prior written permission of Lawyer in accordance with this agreement.

Client empowers Lawyer to take all steps in said matter deemed by Lawyer to be advisable. Client agrees that if, after the investigation of Client's claim, it appears not to have merit, then Lawyer shall have the right to cancel this Agreement.

Client understands that this action may involve multiple clients with similar claims including class claims and Lawyer has explained that fact to the client. That explanation included a discussion concerning conflicts of interest and resulted in an affirmation that there is no known conflict between represented Plaintiffs.

CLIENT ACKNOWLEDGES THAT LAWYER HAS MADE NO GUARANTY REGARDING THE SUCCESSFUL TERMINATION OF CLIENT'S CLAIM AND THAT ALL EXPRESSIONS RELATIVE THERETO ARE MATTERS OF OPINION ONLY.

We do hereby bind our assigns and legal representatives to the terms and conditions as set forth herein.

WE HAVE READ OVER AND FULLY UNDERSTAND THE ABOVE CONTRACT, AND HAVE FULLY DISCUSSED THE TERMS AND CONDITIONS THEREOF AND WE DO HEREBY SET OUR HANDS AND SEALS THIS 14th DAY OF August, 2017.

WITNESSES:

By: CLIENT

Richard H. Lightsey

Client Signature

Client Signature

By: A.G. Solomons, III

Name

Title

EXHIBIT 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CASE NO.: 2017-CP-25-335
	)	
Richard Lightsey, LeBrian Cleckley, Phillip Cooper, et al., on behalf of themselves and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**AFFIDAVIT OF ALEXANDER M. SANDERS JR.**
	)	
South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, SCANA Corporation, and the State of South Carolina,	)	
	)	
Defendants,	)	
	)	
South Carolina Office of Regulatory Staff,	)	
	)	
Intervenor.	)	
	)	

Alexander M. Sanders, Jr., being duly sworn, deposes and says:

1. I am a partner in the Sanders Law Firm of South Carolina, LLC and a Professor at the College of Charleston. I have been an attorney for 57 years. Prior to my current engagements, I had several roles in the legal and academic fields. I have served as Chief Judge of the South Carolina Court of Appeals, Acting Associate Justice of the South Carolina Supreme Court, President of the College of Charleston, and Chairman of the Board at the Charleston School of Law. I also served as a state legislator and practiced law for many years.

2. During my years as an attorney, I have become familiar with class actions and complex litigation. I am currently appointed by the United States Bankruptcy Court in the District of Delaware as the Property Damage Future Claims Representative in the *W.R. Grace* bankruptcy. In that position, I have the responsibility to protect the interests of thousands of homeowners who may, in the future, have claims against the company for contamination of their homes. I also served on the Board of Directors of Armstrong World Industries, Inc., a company involved in mass tort litigation involving asbestos.

3. I also have experience in reviewing the contribution of attorneys who are seeking fees for their work in complex actions. I testified before the tobacco arbitration

panel concerning the fees that should be awarded by that panel to the attorneys who represented a number of the states in the nationwide tobacco litigation.

4. I have taught courses on the law and government at numerous institutions including the University of South Carolina, Harvard Law School, the John F. Kennedy School of Government, Aspen Institute, Defense Research Institute, and at numerous law-related seminars.

5. I have published a number of books and articles involving the legal profession including the "Trial Handbook for South Carolina Lawyers," "Everything You Always Wanted to Know About Judges," and "How Baseball United America After the Civil War."

6. I have been asked to opine on the reasonableness of a 3% total benefit fee to the lawyers representing the customer class in this litigation against SCE&G involving the cancellation of the V.C. Summer Nuclear Plant project. I am familiar with the controversy regarding that cancellation, having followed the story in the newspaper over the past year and a half. I have also had the opportunity to review the narrative of class counsels' work in the case. I am further informed by my experience with typical fees in complex litigation including class actions.

7. I am aware that a similar case in another state resulted in no recovery for the customers, and that the class here faced a formidable obstacle from the Base Load Review Act which, on its face, provided SCE&G the mechanism to request and receive the rates the class wound up paying. It was only through ingenuity and excellent advocacy that the class lawyers were able to prevent that Act from causing a similar unhappy fate for South Carolina ratepayers.

8. I am also familiar with many of the lawyers and law firms involved in this case and can say without hesitation they are among the highest caliber attorneys South Carolina has to offer. I have worked with a number of these attorneys in high stakes legal matters and had the opportunity to observe their abilities first hand. For instance, in the Delaware bankruptcy case for which I am the Property Damage Future Claims Representative, Mr. Edward Westbrook of Richardson Patrick Westbrook & Brickman was court-appointed Special Counsel to represent the class of current claimants with potential property damage claims. In that litigation, which also faced formidable obstacles, Mr. Westbrook and his co-counsel negotiated a creative settlement that funded a trust with a potential value of $140 million. I also know Mr. Terry Richardson, Mr. Daniel Speights, Mr. Pete Strom, and many of the other lawyers involved here personally. They are each lawyers of the highest caliber. An extraordinarily difficult case like this required this high caliber of representation.

9. Based on my experience as a lawyer, judge, lecturer, and witness regarding fee matters, it is my considered opinion that the lawyers in this case deserve the requested 3% on the total class benefit of approximately $2.2 billion. This modest percentage fee is quite reasonable considering the significant benefit the class lawyers achieved, consisting of $115 million cash, property valued at $60-85

million, and approximately $2 billion in rate relief to class members. At a total class benefit of approximately $2.2 billion, the 3% fee would be $66 million. I am informed that SCE&G provided 1,027,922 notices of the class settlement to its customer accounts either through paper bill inserts or electronic notices for those customers receiving their bills electronically. The requested class counsel fee of $66 million equates to approximately $64 per customer account. This is a very modest attorneys' fee to each customer account for having been relieved in large part of a multi-billion dollar burden for years to come.

10. In addition, if the $66 million fee were considered against only the cash and estimated property value components of the settlement, it would fall well within the range of usual contingency fees in complex litigation of 33-40%. The extraordinary result here fully supports such a fee.

11. Awarding a reasonable contingent fee in a case of this type, (and in my opinion 3% is eminently reasonable), serves an important public policy purpose in attracting the most highly skilled plaintiffs' counsel to take on enormously risky cases such as this. Only by securing such excellent counsel can plaintiff classes, such as the customers here, hope to compete with the extraordinarily competent counsel that large, wealthy corporations such as SCE&G can retain. In a very real sense, adequately rewarding plaintiffs' counsel is the only way to "level the playing field" in such complex actions.

12. It is my opinion that a 3% fee computed on the total class benefit is very reasonable.

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

Dated: April 15, 2019

Alexander M. Sanders, Jr.

SWORN to before me this 15th
day of April, 2019

Notary Public for South Carolina
My commission expires: March 8, 2024

EXHIBIT 6

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	CASE NO.: 2017-CP-25-335
)	
Richard Lightsey, LeBrian Cleckley,)	
Phillip Cooper, et al., on behalf of)	
themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	**AFFIDAVIT OF JOHN P. FREEMAN**
)	
v.)	
)	
South Carolina Electric & Gas)	
Company, a Wholly Owned)	
Subsidiary of SCANA, SCANA)	
Corporation, and the State of)	
South Carolina,)	
)	
Defendants,)	
)	
South Carolina Office of Regulatory)	
Staff,)	
)	
Intervenor.)	
_____)	

QUALIFICATIONS AND FACTUAL BACKGROUND

1. I am a Distinguished Professor Emeritus and hold the John T. Campbell Chair in Business and Professional Ethics Emeritus at the University of South Carolina Law School. I am a member of the Ohio, South Carolina, and Washington Bars. I am also admitted to practice before various federal courts, including the United States Supreme Court, the Fourth Circuit Court of Appeals, the Fifth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals and three federal district courts, including the District of South Carolina.

2. Following my graduation from the University of Notre Dame Law School in

1970, I worked at the Jones, Day law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973, I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor, I specialized in courses dealing with business matters, legal accounting, white collar crime, and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a lawyer and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar. I taught legal ethics for 35 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have lectured on the standards applicable to legal fees and lawyer conduct many times, and I have written about the topic.

3. As an attorney, I have brought and prosecuted complex cases, including class actions. I have also opposed class actions as counsel for defendants. I have tried class actions and handled appeals of same. I have participated in class action settlements many times. I have testified in various class actions as an expert witness as to different issues including the reasonableness of fees sought. From 1970 to the present I estimate that I have spent over 12,000 hours dealing with class action lawsuits, either as legal counsel for the class, as counsel for a class action defendant, or as an expert witness in connection with settlement, ethical, or fee issues. A copy of my resume, which further establishes my credentials, is attached as Exhibit 1.

NATURE OF EXPERT'S ASSIGNMENT

4. I have been asked to express an opinion as to the reasonableness of the fee award sought by class counsel in this case.

MATERIAL REVIEWED BY EXPERT

5. In preparing to express my opinion, I have consulted with class counsel, and have studied issues raised in the case.[1] I have also conducted research. I have taken advantage of access to a wealth of background information illustrating the work done by counsel in this matter as reflected on various court dockets available online, including particularly pleadings and orders related to dismissal, class action, and settlement issues. I have reviewed time summaries prepared by class counsel detailing their firms' hours and billing rates. I have also reviewed the Affidavit of Wallace K. Lightsey, outside counsel for the Public Service Commission's Office of Regulatory Staff ["ORS"]. I know Mr. Lightsey to be one of South Carolina's finest lawyers. I note that Mr. Lightsey attests that class counsel: provided ORS with "work product [that] served as an indispensable resource," assisted in document review in a way that "was of enormous assistance to us," and generated "critical testimony for ORS's case." From the written record, it is abundantly clear that this litigation over the demise of South Carolina's largest utility has been a battle royal fought on many fronts. It has been fiercely contested by both sides, with every litigant represented by top-flight legal counsel, many of whom are personally known to me.

[1] Such as the potential unconstitutionality of the Base Load Review Act, the maintainability of the case as a class action, whether the Pubic Service Commission was the exclusive forum with jurisdiction to rule on Plaintiffs' claims, whether Plaintiffs' claims were barred under the so-called "filed rate doctrine," the applicability of Newton v. Duke Energy Fla., LLC, 2018 WL 3370809 (11th Cir. July 11, 2018), and important disputes relating to discovery of facts.

FACTUAL BACKGROUND

6. Pertinent events surrounding the efforts by SCE&G and Santee Cooper to add two reactors (Units 2 and 3) to the V.C. Summer Nuclear Generating Station are recounted in Exhibit 2, hereto. In a nutshell, the multi-billion-dollar expansion program failed ignominiously after billions in rate-payer money had been spent on the now worthless project, with SCE&G claiming ratepayers would be on the hook for paying billions more. Predictably, the catastrophic nuclear reactor-centered business/investment failure precipitated the equivalent of a multi-dimensional legal nuclear war of its own. That battle royal involved claims of fraud on government agencies, both federal and state, fraud on corporate entities by their managers, and fraud on hapless ratepayers and the Public Service Commission ["PSC"] by the companies and their managers. The project's failure bred accusations of deception and coverup, finger-pointing, recrimination, and lawsuits galore.

7. When the lawsuits began arriving, SCE&G was unapologetically draining off more than $1 million per day from ratepayers' wallets to pay financing costs for the failed project, with no end in sight. Indeed, soon after publicly announcing the gigantic, unprecedented, construction mismanagement disaster it had on its hands, SCE&G filed for relief before the PSC, seeking to launch a preemptive strike. Through the filing, SCE&G sought a ruling that the payments made and allegedly owed on the doomed project should be ruled to be "prudent." SCE&G's aim was to have those payments included in the utility's rate base, the better to turn the company's management fiasco into an ongoing boondoggle permitting it to collect vastly more money from ratepayers in the future. A coalition of top-flight plaintiffs' lawyers recognized SCE&G's shameless action as the money-grab it was and took action to fight SCE&G's contentions, excuses and defenses, including SCE&G's reliance on the:

- the "Business Judgment defense,"
- the Base Load Review Act,
- the "Filed Rate Doctrine,"
- the Doctrines of Res Judicata, Collateral Estoppel, Law of the Case,
- the claim that ratepayers had failed to exhaust their administrative remedies before the PSC,
- the claim that the PSC had exclusive jurisdiction over ratepayers' complaints,
- the claim that the venue where the suits were filed was improper,
- the claim that a lawsuit filed by *Friends of the Earth and Sierra Club* before the PSC had priority and that private lawsuits in circuit courts needed to be stayed until that one was determined,
- the claims that Plaintiffs were barred from recovery by the economic loss rule, the voluntary payment doctrine, the contract governing the terms of the relationship between Plaintiff and SCE&G, and because SCE&G is not a fiduciary with respect to its ratepayers,
- the claims that class counsel were ethically unfit to serve as class counsel and that the cases could not proceed as class actions,
- and the contention that Plaintiffs had no right to a jury trial.[2]

[2] In addition to these contentions, in the related federal RICO case of *Glibowski v. SCANA Corp.*, et al, 18-cv-00273-TLW, SCE&G asserted numerous RICO-specific defenses, including the contentions that the Plaintiff in Glibowski failed to allege facts showing (1) that Defendants' actions directly harmed Plaintiff; (2) that Defendants committed underlying crimes, or "predicate acts"; (3) that Defendants engaged in a pattern of those predicate acts that threatens long-term criminal conduct; and (4) that an enterprise, or organization, existed for a purpose beyond committing the alleged RICO crime. *Glibowski v. SCANA Corp.*, et al, 18-cv-00273-TLW, SCE&G Motion to Dismiss, ECF 24-1, at 3-4. SCE&G ridiculed Plaintiffs' allegations in the *Glibowski* case as "mere assertions and unadorned conclusory allegations" that lacked necessary particularity and were legally insufficient. *Id.* at 5.

When SCE&G's motion to dismiss Plaintiffs' claims was rejected by the Circuit Court, it filed an appeal before the Court of Appeals. That appeal was dismissed. Undaunted, SCE&G then petitioned for a rehearing, which the Court of Appeals rejected in May of 2018.

8. Besides making a host of defensive legal arguments, as is often the case in major white-collar misconduct cases, SCE&G endeavored to complicate Plaintiffs' fact-finding work by trying to disrupt and stifle Plaintiffs' work on factual discovery. It did so by seeking to suppress disclosure of important evidence, such as by denying access to the original October 2015 Bechtel Report, and the views of Carlette Walker and other key witnesses capable of shedding light on SCE&G's knowledge, actions, and motivations. Indeed, the record reflects SCE&G's unwillingness to engage in any reasonable discovery for months on end absent a Court order. Rather than provide reasonable and timely discovery, SCE&G instead barraged Plaintiffs with a steady stream of court filings attacking every aspect of Plaintiffs' cases, including assaulting the ethical behavior of Plaintiffs' counsel.

9. Though discovery from SCE&G was slow in coming, Plaintiffs, working in concert with the South Carolina Attorney General's office and lawyers assisting the ORS, and using informal discovery devices such as FOIA (yielding a 700,000 page mother lode of documents obtained from state-agency Santee Cooper), were able to get traction helpful in understanding the root causes for the V.C. Summer project's failure, mismanagement and the cover-up thereof.

EXPERT OPINION

10. Class counsel seek a court awarded fee of no more than three percent of the total benefits provided to the class (consisting of cash, real estate value, and future rate relief components), well below the outside measure of five percent of the total benefits specified in the

class action notice. Putting aside the settlement's crucial and very valuable rate relief feature, the fee sought is approximately one-third of the cash and property expected to be received into the common fund. As is standard in class action settlements, no fees will be charged for the considerable additional legal work to be done, but future expenses incurred in administering the settlement fund and monetizing the real property will be charged against the settlement fund. In my opinion, based on the unique facts of this case, a fee award to counsel for the class in an amount equal to 3 percent or less of the total relief obtained is proper. The same goes for a fee of one-third or thereabouts of the cash and property value component of the common fund relief, viewing that part of the settlement in isolation. Additionally, receipt by counsel of a portion of the fee sought will be deferred and not deemed earned until the property transferred for the Class's benefit is monetized. I find it telling that, as noted in the Class Counsel's Fee Application, "[T]he 3% class fee, approximately $66 million, is less than two months of the excess rates SCE&G was collecting for the V.C. Summer plant." I also find it telling that the fee parameters were disclosed in the Class Action Notice, yet, to my knowledge, no class member has, as of the date of this Affidavit, attacked the fee being sought as excessive. As discussed in detail below, I find the fee application to be meritorious in light of all relevant factors. In summary, I recommend that the Court grant the fee application in its entirety.

REASONS FOR OPINION

11. First and foremost, this is and always has been a very difficult case. The SCE&G ratepayer litigation has been hotly contested since the first complaint was filed. From Day 1, class counsel has faced determined, talented opposition in processing this complex case. SCE&G is well known to me for being a very, very determined foe in litigation, and it certainly

was in this sprawling class action litigation that boldly attacked the company's management policies, management misconduct, and, potentially, its existence. That a similar class action brought by different, highly experienced counsel in Florida failed,[3] testifies to both the difficulty of this South Carolina case, and to the professionalism and tenacity of the class counsel prosecuting it.

12. The difficulty of this litigation is evident from the voluminous record already generated. SCE&G had a right to play hardball every step of the way leading to settlement. It did so. SCE&G's strenuous efforts are illustrated by court records chock full of motions and memoranda making every conceivable argument on its behalf. Against this backdrop, I turn to factors deemed relevant in setting a fee award under South Carolina law.

FEE AWARD FACTORS

13. Under South Carolina law, a fee award calls for "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id.* Consideration of all six factors is necessary but none controls.

14. There is no requirement that a fee award be limited to no more than a specific percentage of the plaintiffs' damages. Indeed, in *Baron Data Systems, Inc. v. Loter,* 297 S.C. 382, 377 S.E.2d 296 (1989), the court awarded a fee of $26,000 in a case where the prevailing

[3] *Newton v. Duke Energy Florida, LLC*, No. 16-cv-60341-wpd, 2016 WL 10564996 (S.D. Fla. 2016), *aff'd,* 895 F.3d 1270 (11th Cir. 2018).

plaintiff recovered a $16,161 verdict. I testified via affidavit for the petitioning lawyer in *Baron*.

15. The Supreme Court in *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (1998), approved a fee of one-third of the plaintiff's recovery, finding that contingent fee arrangements were common in complex cases, and that the typical range of such contingency fees was one-third to one-half of the recovery. 332 S.C. at 161, 503 S.E.2d at 489. After considering each of the six factors, the court decided that a fee of one-third of the recovery was reasonable. In *Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244, 569 S.E.2d 349 (2002), the South Carolina Supreme Court affirmed an award to the class of $10,935,000, accompanied by an additional $3,645,500 in attorney's fees and $18,242 in costs. More recently, in *Edwards v SunCom*, No. 02-CP-26-3539, 2008 WL 4897935 (S.C.Com.Pl. May 05, 2008), Circuit Judge Steven John upheld a one-third contingency fee in a class action, noting that:

> This percentage is set forth in the retainer agreement executed between Class Counsel and the named plaintiff and is within the range of reasonableness for attorneys' fees in a class action. *See Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980) (holding that attorneys' fees for a class action may be based on the entire common fund even if some class members make no claims against the fund); *Fairey v. Exxon Corp.*, No. 94-CP-38-118, Order filed October 9, 2003 (First Judicial Circuit) (J. Goodstein) (approving attorneys' fees and costs of $12,000,000.00 representing 40% of recovery); Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 14:6 (4th ed. 2002) ("Empirical studies show that .. fee awards in class actions average around one-third of the recovery.").

In another case, *Fairey v. Exxon Corp.*, No. 94-CP-38-118 (S.C., Orangeburg County Ct. Common Pleas Mar. 18, 1998), *appeal dismissed* (S.C. May 14, 1998), a fee award of 40 percent of the $30 million common fund accumulated for the class was approved by the Circuit Court. I was involved in the *Fairey* case on class action issues, and filed an affidavit in support of the settlement and successful fee petition.

16. In *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), the Supreme Court

recognized that the percentage of recovery method was the accepted way to analyze fee reasonableness in common fund cases. The court noted: "[W]hen awarding fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.' These courts consequently base an award of attorneys' fees on a percentage of the common fund created, known as the "percentage-of-the-recovery" approach. *See, e.g.*, *Edmonds v. United States*, 658 F. Supp. 1126, 1144 (D.S.C. 1987) (expressing a preference for a percentage-of-the-recovery method when awarding attorneys' fees from a common fund)." Even more recently, in *Anderson Hospital v. W.R. Grace, Inc.*, CA No. 92-CP-25-279 (Hampton Cty.), Judge Hayes awarded class counsel a 1/3 contingent fee in a class action settlement that generated a common fund totaling $57 million. I testified on the fee reasonableness issue in the *Anderson Hospital* case.

17. I can testify from personal experience that the fee sought here is substantial, but by no means unprecedented. As explained in Class Counsel's Application for Reimbursement of Expenses and Contingency Fee Award, this case can be analogized to the mega-fund cases that have generated large fee awards in other contexts. For example, the most well-known of the mega-case settlements was the $250 billion nationwide tobacco settlement. In the tobacco cases, a three-person arbitration panel evaluated the performance of plaintiffs' counsel in the various state actions settled and awarded an appropriate percentage. In the Florida state tobacco case, *In Re: Florida v. Am. Tobacco Co.*, No. CL-95-1466-AH (Palm Beach Co. Cir. Ct.), which generated a $13.2 billion recovery by the State, the panel awarded a 26% fee ($3.4 billion). I am familiar with the Florida arbitration fee award in that case, having testified as an expert in that arbitration. As class counsel points out in their pending Fee Application, the fee sought in this case is miniscule compared to the result of the Florida tobacco mega-case fee arbitration and

others like it.

18. As stated above, class counsel here seek an award of only 3 percent of the total relief generated and roughly one-third of the common fund consisting of cash and the estimated value of property being received. I agree with class counsel that the fee sought would be a fair and reasonable fee when the totality of the six factors is considered. I now turn my attention to each facet of the South Carolina Supreme Court's six-factor test.

Factor #1: The Nature, Extent, and Difficulty of the Case

19. This settlement involves very important and hotly contested litigation fought between South Carolina's crown jewel publicly-held utility, SCE&G, and its parent, SCANA, against the utility's customers numbering in the hundreds of thousands. It resembled World War I trench warfare, in that every inch of legal turf was bitterly contested. Anybody familiar with this litigation would agree that it was complex, exceptionally challenging on both sides, and, accordingly, handled by expert lawyers on both sides. More than two dozen depositions were taken; hundreds of thousands of pages of documents were produced and reviewed. The arduous nature of this case was entirely predictable. The data generated to support this litigation are voluminous, requiring the up-front investment of over $400,000 contributed by class counsel, and leading to total costs exceeding $864,000 and climbing.

20. In my judgment, big business misconduct cases, particularly class action lawsuits, tend to be complex, difficult, and fiercely contested. This case fits that mold. This litigation's scope, novelty, and difficulty called for top quality lawyering, which is what class counsel supplied. I am personally aware of class counsel's abundant experience in handling class actions and other complex litigation. Class counsel's knowledge of the applicable law is demonstrated by the various briefs filed in various courts, including appellate courts. The skill level presented by

opposing counsel necessitated a high level of performance by class counsel in this case. It has been observed that "[a]dditional skill is required when the opponent . . . is a sophisticated corporation with sophisticated counsel." *Smith v. Krispy Kreme Doughnut Corp.*, 2007 WL 119157, at *2 (W.D.N.C. Jan. 10, 2007). Here, defendant was represented by knowledgeable, litigation-specialized counsel, highly adept at handling complex cases. On the defense team were well-credentialed lawyers from the nationally known firm of King and Spalding. Also, South Carolina's highly-respected Haynsworth firm assisted in representing the defendant utility and its holding company. The zealous defense of this matter offered by this A-Team of defense lawyers absolutely mandated that class counsel provide diligent and competent representation to the Plaintiffs and the class in order for any hope of recovery to be realized. Class counsel's achievement in obtaining a very good outcome in this action, defended by such renowned counsel, is a testimony to the quality of class counsel's representation.

21. Another consideration related to the first South Carolina fee factor, is that class actions by their nature inherently increase the complexity of a case, as well as class counsel's potential malpractice exposure in the event something misfires. Assembling proof of facts concerning far-flung actors, where construction and engineering issues are highly technical, witnesses have scattered, and crucial documents are hard to obtain posed a challenge to Plaintiffs' counsel. I emphasize that this case was difficult on virtually every possible level. Concluding it successfully is a tribute to class counsel's tenacity, special competence, zeal, attention to sound ethics, and professionalism.

22. Based on my knowledge, training, background and experience, I have no hesitation in saying that class counsel's industry, ingenuity, and determination in prosecuting this case has been exemplary.

23. In my opinion, class counsel has consistently fought well against very powerful, sophisticated, and well-represented adversaries. I believe that few, if any, other counsel in South Carolina or anywhere else would have had the combination of drive, doggedness, expertise, resources, and creativity to achieve the result they did under the uniquely difficult circumstances presented by this case.

24. Based on my long experience in dealing with fee awards in similar complex cases, I believe that the first South Carolina Supreme Court fee award factor strongly supports a very substantial fee award.

Factor # 2: The Time Necessarily Devoted to the Case

25. Based on information available to me, it appears that over the course of their fierce 15-month battle, class counsel and their staffs invested a total of 24,500 hours of lawyer time, plus almost 2,300 hours of paralegal time in prosecuting SCANA litigation. These hours attest to the monumental size and complexity of the legal battles fought between Plaintiffs and their adversaries. This litigation doubtless is one of the largest, if not the largest, pieces of civil litigation currently active on South Carolina's civil dockets. This case has been a time-eater and an energy pit. The hours already spent translate into many years of lawyers' effort. Processing the pending settlement will require substantial additional time. All counsel involved are extremely busy professionals. The case settled because class counsel invested all of the many hours needed to move this case down the path toward trial.

26. There is a reason why so many hours have been spent on this case. SCE&G had a legal right to demand that Plaintiffs fight for virtually every inch of turf, and it did. SCE&G had a right to play hard-ball, and it did. I say this with no criticism intended. SCE&G had a perfect right to defend itself vigorously, and it did. To counter this behavior, Plaintiffs' counsel needed

to work extra-long hours and extra-hard. By dogged persistence and dedication, class counsel demonstrated their ability to protect class members and secure a substantial award. The fee sought is justified based on consideration of many factors, of which the tenacity and skill of Plaintiffs' adversaries is one.

27. Based on my long experience in dealing with fee awards in similar complex cases, I believe that the second South Carolina Supreme Court fee award factor, time invested in the case, strongly supports the substantial fee award being sought.

Factor #3: The Professional Standing of Counsel

28. This factor counts heavily in class counsel's favor. Plaintiffs' lead counsel are South Carolina-based big-case experts and all are personally known to me. I have worked with the Strom Firm; Richardson Patrick Westbrook & Brickman; the Bell Legal Group; Speights & Solomon; Lewis Babcock, Savage; Royal & Sheheen; Creighton Coleman; and Ken Suggs of Janet, Janet & Suggs on various large and challenging cases over the years. I have long experience in RICO litigation, and find the Plaintiffs' filings under the *Glibowski* caption in federal court to be high quality work done by expert lawyers, including Mr. Suggs' and Mr. Taylor's firms, and Thomas Holman, and Kenneth McCallion and their firms.

29. In my dealings with the above-named South Carolina lawyers and firms over the years, they have always worked diligently to serve their clients' interests.

30. For example, sixteen Richardson Patrick lawyers are currently recognized on the list of Best Lawyers in America, including class counsel Terry Richardson and Edward Westbrook. They were assisted by Daniel Haltiwanger who is of counsel to the Richardson Patrick law firm. Mr. Richardson's peers named him one of the Top 10 attorneys in South Carolina in the 2016 edition of Super Lawyers. Mr. Haltiwanger has excelled as a plaintiffs'

lawyer, leading litigation in diverse areas such as paving defects on I-20, and tire malfunctions leading to the Ford/Firestone recall. Each of these lawyers is highly skilled in complex, big-case litigation, having served, for example as leading (and successful) litigators in both the asbestos and tobacco wars. The Richardson Patrick firm served on the Plaintiffs' Executive Committee in this litigation.

31. Serving with the Richardson Patrick firm as co-lead counsel was J. Preston Strom and his firm. The Strom firm has been widely recognized for doing outstanding work in big cases. Mr. Strom, a former United States Attorney for the District of South Carolina, has been listed as one of America's Best Lawyers since 2010. He was assisted by his fellow Strom Law Firm attorneys, including, John R. Alphin, Mario A. Pacella, and Bakari T. Sellers, who, like their lead partner, Pete Strom, are all personally known to me for doing excellent work.

32. Dan Speights of the Speights and Solomons firm in Hampton is also a veteran of the asbestos wars, and many other epic legal battles. Mr. Speights, for example, has tried and settled more asbestos property damage cases than any other lawyer in the country. He was instrumental in negotiating and bringing to fruition the giant Celotex asbestos bankruptcy payout plan. Mr. Speights was assisted by his partner, Gibson Solomons, who is personally known to me as an excellent lawyer. Both Messrs. Speights and Solomons have won numerous landmark cases in the asbestos field and elsewhere. Mr. Solomons has been involved in class actions related to farming and crop disputes, hazardous substances and the resulting real property damage, product defects like construction and automobile products, and contractual disputes. I have assisted both Messrs. Speights and Solomons as an expert on various cases and can testify personally to their unstinting efforts on behalf of their clients and the high quality of their work.

33. Likewise personally known to me for doing excellent legal work is J. Edward

Bell, founding partner of the Bell Legal Group, LLC in Georgetown. Mr. Bell was recently inducted into the Inner Circle of Advocates, an invitation-only group with membership limited to 100 of the best plaintiff trial lawyers in the United States. In a career spanning more than 30 years, he has distinguished himself as a top litigation attorney at the local, state and national levels. He has tried more than 300 major cases throughout the United States. Mr. Bell also serves as President and Managing Partner of the Charleston School of Law.

34. Another outstanding group of lawyers are those who appeared for the Lewis Babcock firm. That firm has brought and successfully resolved a variety of pathbreaking class action cases, including suits on behalf of TERI recipients, victims of closing fee fraud, and victims of sales tax overcharges. Keith M. Babcock of the firm has been recognized as one of America's Best Lawyers since 2007. I have assisted the Lewis Babcock law firm on many matters and know personally that the firm's lawyers are excellent advocates.

35. Besides being a deeply respected public servant, class counsel Vincent Sheheen of Savage, Royall, & Sheheen, LLP, is, to my personal knowledge a gifted lawyer, known for the passion and thoroughness he brings to serving his clients, including businesses and individuals involved in complex business litigation.

36. Like Mr. Sheheen, attorney Creighton Coleman, of the Winnsboro firm of Coleman and Tolen, is personally known to me. Mr. Coleman has worked for many years as a respected public servant as a legislator. Mr. Coleman has also served as a prosecutor in both the Fifth and Sixth Judicial Circuits. He, too, is a talented advocate for his clients.

37. Another leading complex litigation firm that served Plaintiffs is McGowan, Hood & Felder. I am very well familiar with the firm and its lawyers. They have an enviable reputation for generating excellent results for their clients. For example, in the *Spartanburg*

Regional Health Services case, the McGowan Hood firm generated an award that Judge Henry Floyd's order recognized as being at "the high end of the spectrum for cash awards paid in any antitrust case in the history of American jurisprudence." *Spartanburg Regional Health Services District, Inc. v. Hillenbrand Indus., Inc.* 7:03-cv-02141, Order Filed August 15, 2006, ECF No. 377, at 10.

38. Adding technical litigation expertise for Plaintiffs in this massive litigation effort was Gregory Michael Galvin of the Galvin Law Group. Mr. Galvin was instrumental in creating and utilizing a computer platform with Nemo software to search the approximately one million documents produced by Defendants. This culling process enabled Plaintiffs to cull out the truly valuable pieces of evidence for use by the lawyers when preparing for depositions and motion hearings. Mr. Galvin's unusual technological lawyering skill has been recognized by the South Carolina District Court which awarded him a Distinguished Service Award.

39. In addition to the lawyers mentioned in paragraphs 30-38 above, several of the petitioning law firms worked against SCANA in Federal Court, using the RICO statute to put further pressure on SCE&G to agree to a reasonable settlement. The lawyers involved in this effort had brought to bear long experience and high legal skill. They were Kenneth F. McCallion, of McCallion & Associates, LLP, New York, New York, whose 46 years of practice experience includes service as a Special Attorney General in the Justice Department's Organized Crime and Racketeering Section; Thomas A. Holman of the Holman Law, and Jason Taylor working with the Janet Jenner and Suggs law firm. The senior Columbia-based Janet Jenner partner, Ken Suggs, has been recognized as one of America's Best Lawyers since 1991. Over the years he has successfully brought difficult cases against SCANA and others, yielding multi-million dollar verdicts. His law firm's work is deserving of great respect.

40. It is obvious to anyone familiar with litigation in South Carolina that Plaintiffs have had the benefit of an All-Star lineup of leading lawyers. They are all consummate professionals. I have dealt with them numerous times, and have always been impressed by their drive, ingenuity, thoughtfulness, and brutal, unstinting determination to do everything needed to protect and benefit their clients. Those legal counsel are more than successful, big-name lawyers, they qualify as "lawyers' lawyers." They sport enviable reputations for good reasons. They are a well-seasoned group. More than half of the lawyer-hours invested are attributable to lawyers with 20 or more years of experience. The lawyer time spent by attorneys with less than 10 years of experience totals less than 4,000 hours of the 24,500 spent to date. It comes as no surprise that, in this case, true to form, these experienced, savvy lawyers jelled into and performed as an outstanding litigation team. The lawyers whom I personally know well are tireless, outstanding advocates, and I say this based on many years of close observation. Based on my review of their work-product, I can say the other lawyers likewise are highly effective advocates. The enviable settlement that these "Who's Who" level counsel bring forward for court approval speaks for itself.

41. This case required experienced, tenacious, hard-hitting service from Plaintiffs' lawyers. And that is precisely the brand of lawyering Plaintiffs received. Plaintiffs' lawyers meshed into an excellent team, a team sophisticated and dedicated enough to bring a very formidable and well-represented adversary to heel. Class counsel's deep and wide experience means there was little risk of wasted time, and hence no need for discounting their time. Their outstanding reputation for integrity and professionalism means their records, including their time, billing, and expense records, are entitled to be credited.

42. To sum up, in my opinion, as an expert in the field, Plaintiffs have had the benefit

of truly outstanding advocacy. Accordingly, based on my long experience in dealing with fee awards in class action cases, I conclude that the third South Carolina Supreme Court fee award factor strongly supports a very substantial fee award.

Factor # 4: Contingency of Compensation

43. This was a contingent fee case from its inception. Class counsel have advanced over 24,500 hours of lawyer time in this litigation without any expectation of compensation except in the event of recovery on behalf of the Plaintiff Class. They have placed at risk substantial advanced costs, exceeding $864,000. Indeed, very, very few law firms in South Carolina have the ability to front costs running into the hundreds of thousands of dollars as class counsel have. This action attests to their commitment to their clients, and to their professional diligence. I reiterate at this point that undertaking this case posed real risk for Plaintiffs' counsel. A similar huge case in Florida was thrown out of court, leaving the plaintiffs' lawyers only with uncompensated time and unreimbursed expenses.

Factor # 5: Beneficial Results Obtained

44. SCANA and SCE&G have agreed to a Common Benefit Fund comprised of the following amounts, to be distributed to the class members:

- A credit of up to $2,000,000,000.00 in future electric rate relief will inure to the benefit of the Common Benefit Fund in favor of class members over a period of time established in the proceeding pending before the Public Service Commission of South Carolina (the PSC); and
- A cash payment of $115,000,000.00, which will include the full value of the SCANA rabbi trust funded in January 2018 that was created in whole or in part for executive change-in-control payments; and

- Transfer of SCE&G owned real estate or sales proceeds from the sale of real properties, including among others, the Ramsey Grove Plantation; the original Charleston Gas & Light Building at 141 Meeting Street in Charleston; and certain Otarre properties in Cayce. The exact value of these properties is uncertain; the real estate being transferred to benefit the class is currently valued at between $60 and $85 million.

Distribution of any settlement funds is subject to court approval. The other settlement pre-conditions, a final order by the PSC approving a merger between SCANA Corporation and Dominion Energy, and a closing of the proposed merger between the parties have already taken place.

45. This stands as one of the largest common fund recoveries in South Carolina history. This result was achieved in the face of intransigence on the part of the opposition, represented by lawyers having enviable reputations who are personally known by me to be very excellent attorneys. Plaintiffs' case was prepared with all the care needed for class counsel to do a first-rate job. This case has been marked from the start by careful, determined, highly professional preparation. Obviously, lawyers for the class have achieved a very good final result. This victory is a tribute to aggressive, heady, creative lawyering by class counsel. They have given their clients an outstanding result. I reiterate that I consider the settlement fund with a payout of millions of dollars in cash and property, plus two billion dollars in rate reduction benefits to be fair, reasonable and adequate.

Factor # 6: Customary Legal Fees for Similar Services

46. It is true that fees for like work are "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stensen*, 465 U.S. 886, 104 S. Ct. 1541, 1547 (1984). In mega-settlement case cases like this it was recently noted by the in a District of

Columbia Circuit Court case that "even in cases where . . . the common fund is over one billion dollars," an award of 7.4% would be "unexceptional." *In re Black Farmers Discr. Litig.*, 953 F. Supp. 2d 82, 99 (D.D.C. 2013), *citing In re Black Farmers Discr. Litig.*, 856 F.Supp.2d 1, 40 (D.C.C 2011). As the Court has explained:

> According to one study, in cases involving common funds "from $500 million to $1 billion" in 2006 and 2007, "the mean and median awards were both 12.9%" of the fund. *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F.Supp.2d at 1033 (citing Brian T. Fitzpatrick, An Empirical Study of Class Action Settliments and Their Fee Awards, 7 J. Empirical Legal Stud. 811, 839 (2010)). In other cases, where the class recovery exceeded $1 billion, courts have approved awards in the 5 to 10% range. *See, e.g., Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d at 122 (approving district court's award of 6.5% *99 of $3 billion fund); *In re Enron Corp. Securities, Derivative & "ERISA" Litig.*, 586 F.Supp.2d 732, 740, 828 (S.D.Tex.2008) (approving award equal to 9.52% of $7.2 billion fund).

In re Black Farmers Discr. Litig., 953 F. Supp. 2d at 99. Evaluated as a fee sought in a mega-fund case, here the fee sought by class counsel of 3 percent of the common fund is low compared to national norms.

47. The fee sought is also appropriate if attention is given only to the fee percentage in relation to the cash and property component of the common fund. The South Carolina Supreme Court determined in *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (1998), the customary fee in South Carolina for complex cases accepted on a contingent-fee basis ranges from one-third to one-half of the gross recovery. *Global Protection,* 332 S.C. at 161, 503 S.E.2d at 489. I personally have participated in very difficult cases where contingent fees of as much as 50 percent were collected. *See also Miller v. Botwin*, 258 Kan. 108, 899 P.2d 1004 (1995) (court allowed 50 percent contingent fee for amounts the attorney saved the client in property taxes). Judge Harwell observed in *Dewitt v. Darlington Co.,* 2013 WL 6408371 (D.S.C. 2013), "Attorneys fees awarded generally range anywhere from nineteen percent (19%)

to forty-five (45%) of the settlement fund."

48. The Court should use the prevailing market rate in the community for similar services of lawyers "of reasonably comparable skill, experience, and reputation." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986). With complex class action cases of this sort, the community is nationwide in scope. In contingent fee cases, fees in the local community ordinarily tend to range from 30-40 percent. This is not an ordinary case or an ordinary result. The case is extraordinary and so is the result. I also take into account results in other cases in which I testified, including Judge Johnson's fee award order in *Lackey v. Green Tree Financial Corp.,* Civil Action No. 96-CP-06-073 (July 24, 2000), and Judge Ervin's fee award order in *Bazzle v. Green Tree Financial Corp.,* Civil Action No. 97-CP-18-258 (July 24, 2000). In both of those hard-fought attorney preference cases, fees equal to one-third of the common fund were awarded. In *Fairey v. Exxon Corp.,* Civil Action No. 94-CP-38-118 (C.P. Orangeburg County), a fee award of 40 percent of the $30 million common fund accumulated for the class was approved by the Circuit Court. I was involved in the *Fairey* case on class action issues, and filed an affidavit in support of the settlement and successful fee petition. This case was riskier, far more complex, and more bitterly contested than *Lackey*, *Bazzle* or *Fairey*. I consider the fee reasonable in light of all relevant facts, including the delay in payment, the staggering amount of work involved, the excellent result, and the fact that counsel had to litigate strenuously and at length in multiple forums to advance the interests of the class.

49. Also relevant are some other less demanding and less complex cases with which I am personally familiar. The fee award approved by the Circuit Court in *Carter v. Wal-Mart Stores, Inc.,* Civil Action No. 06-15-839 was 1/3 of the $49 million common fund, a percentage less that that granted in the similar Wal-Mart employee pay cases of *Lerma v. Wal-Mart Stores*,

Case No. CJ-2001-1395 (Cleveland County, Oklahoma, March 16, 2009, Order) (granting fee amounting to 40% of the $42,500,000 common fund); *Hale v. Wal-Mart Stores*, 01-cv-218710, 16th Judicial Circuit Court, Jackson County, Missouri (May 28, 2009, Order) (granting an award of 38.3% of the $90,000,000 common fund). In another Wal-Mart class action, *Ouellette v. Wal-Mart Stores, Inc.*, File No. 67-01-CA-326 (Washington County, Florida, Circuit Court), in an Order dated August 21, 2009, the Court, applied Florida law which required a lodestar/multiplier analysis. Wal-Mart had agreed to pay up to $148,000,000. The amount of fees sought was $49,333,333, which was one-third of the common fund. Though the court was required to use the lodestar-multiplier approach, it nonetheless approved the fee sought, using a lodestar multiplier of 4.68, though noting that a "multiplier of 5 would be appropriate." Id. at p. 8, ¶ 30. I am familiar with these facts since I was a witness in the *Ouellette* case and testified at the fee hearing in Chipley, Florida. In this case, the lodestar exceeds $18,600,000. *See* Affidavit of John Alphin, p. 2, ¶ 6. The lodestar multiple for fees in this settlement is lower than that approved in the *Ouellette* case and others like it.

50. In *Maddox v. First American Companies*, Case No.: 96-CP-07-599 (C.P. Beaufort County), I participated as counsel in a complex securities class action that was settled as to most defendants. The court awarded class counsel a fee based on one-third of the amount recovered through settlement. *Maddox* was a much simpler case than this one.

51. In other far less complex class action cases, 1/3 fee awards have been approved. *Malanka v. Castro*, Fed. Sec. L. Rep. (CCH) ¶ 95,657 (D. Mass. 1990), featured a payout to class counsel of approximately 1/3 of the settlement fund. So did *In re Fiddler's Woods Bondholders' Litigation*, Fed. Sec. L. Rep. (CCH) ¶ 93,537 (E.D. Pa. 1987), also a securities case. So did *O'Donnell v. Northland Madison at Park West, LLC,* (Ninth Cir. 2010-CP-10-

9095). In a March 20, 2015, Order, issued in that Charleston Circuit Court case, Judge Newman granted a one-third contingent fee in a condominium construction defect class action where the common fund was $6.3 million. This case was far more difficult than either *Malanka*n, *In re Fiddler's Woods Bondholders' Litigation*, or *O'Donnell.*

52. Each case stands on its own facts. Here, the fee sought is in line with those approved previously by South Carolina state court judges and Federal District Court judges in this District, and the fees sought by class counsel are clearly reasonable when viewed from a national perspective. As discussed above, payment to class counsel of legal fees sought is clearly reasonable when considered in light of court-approved fee awards in a host of complex cases. Likewise very reasonable are the petitions for cost reimbursement and for payment of the class representative service awards.

SUMMARY

53. As I have explained above in detail, this has been a difficult and unusual case against a determined, resourceful and exceptionally well-represented adversary.

54. The issue is how to treat fairly those who have done an enormous amount of work under tough conditions supremely well. I believe that outstanding, truly superior legal work such as reflected in this case deserves to be recognized as such, and rewarded as such, and excellence on the part of class counsel's team is what I find evidenced by the records chronicling this important and hard-fought lawsuit.

55. In summary, I recommend that the proposed settlement be approved and that class counsel's application for fees and costs should be granted. I hold this opinion to a reasonable degree of professional certainty as an expert in the field of legal fee awards in complex class

action cases.

56. Further affiant sayeth not.

John P. Freeman

John P. Freeman

SWORN TO AND SUBSCRIBED BEFORE ME
this 12th day of April, 2019.

Notary Public for the State of Washington
My Commission Expires: 2/7/2021

RESUME
John P. Freeman
Professor of Law Emeritus

Address and phone numbers:

200 West Highland Drive
Unit 107
Seattle, Washington 98119
(803) 361-6934
jfreemanusc@gmail.com

Education history:

LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)

Employment history:

1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South Carolina

1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977

1978-2008, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, summer 1978

Present:

Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus

EXHIBIT 1

Honors and Awards:

Undergraduate:	Member Beta Alpha Psi (Honorary Accounting Fraternity)
Law School:	Executive Editor, Notre Dame Lawyer; Distinguished Military Graduate At University of South Carolina Law School: Senior Class Annual Outstanding Faculty Award of 1975, 1976, 1977, 1984
Professional:	Winston Churchill Award, South Carolina Jury Trial Foundation 1995; Distinguished Service Award, South Carolina Trial Lawyers Association 2000; Appointed Member, South Carolina Judicial Merit Selection Commission; John Belton O'Neall Inn of Court McDonald/Rhodes Award 2010
Admitted to Practice:	Ohio; South Carolina; Washington
Teaching History **Courses Taught**:	Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, 1999-2008, Regular Legal Ethics Column for the South Carolina Lawyer.

Article, Protecting Judicial Independence, 6 Charleston L. Rev. 511 (2012).

Article, Appearance of Impropriety, Recusal, and the *Segars-Andrews* Case, 62 S.C.L. Rev. 485 (2011).

Article (with Stewart Brown and Steve Pomerantz), Mutual Fund Advisory Fees: New Evidence and a Fair Fiduciary Duty Test, 61 Okla. L. Rev. 83 (2008).

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law 739 (2007).

Viewpoint, Say No to Vending Machine Justice, S.C. Lawyer, July 2007, at 8.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004).

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scienter in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper? Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1-124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371-439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732-983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122-40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2004-16: Special Relationships and Legal Ethics, Oct. 14, 2016, S.C. Bar, Columbia, S.C.; Who's My Client? Understanding the Relationship Between In-House Attorneys, Members and Lobbyists, SC House of Representatives In-House CLE, Oct. 13, 2016, Columbia, S.C.; Incivility, Attempted Shaming and Other Ethics No-Nos, South Carolina Public Defender Ass'n, Sept. 28, 2016, Myrtle Beach, SC; Pascoe v. Wilson and other Ethics Lessons, Lexington County Bar Ass'n, August 4, 2016; Ethical Issues for South Carolina Environmental Practitioners, June 3, 2016, Columbia SC; Hot Ethics Issues for Environmental/Regulatory Practitioners, Jan. 22, 2016, S.C. Bar, Charleston, S.C.; S.C. Bar, Business Lawyer Horror Stories II, Oct. 3, 2014; Greenwood, S.C., S.C. Ass'n of Criminal Defense Lawyers, "Whose Theme and Theory is it Anyway?" July 11, 2014; Ft. Worth, Texas, Advice on Duties Owed by Members of the Board of Trustees, May 16, 2014; Charleston Bar Ass'n, 20 Ethics Tips for a Happier Professional Life, Feb. 7, 2014;2004-13: Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar March 22, 2013; SC Bar, Ethical Issues in Working with Vets and Their Families, Feb. 12, 2012; Expert Witness Participant, SC Bar-ABOTA, Masters in Trial Program, Feb. 1, 2013; SC Bar, Ethical Issues in Handling VA Appeals, Jan. 12, 2013; SC Bar, Ethical Issues in a Non-Adversarial System, Dec. 11, 2012; Richland County Bar Ass'n Ethics CLE, Nov. 9, 2012;University of South Carolina Law School, Alumni Reunion Ethics CLE, Nov. 3, 2012; General Assembly Legal Staff, Ethics for Government Lawyers, Oct. 3, 2012; Setzler Scott Law Firm (In-house CLE), West Columbia, SC, Ethics CLE, Feb. 14, 2012; Charleston Law School, Panel, Symposium on Lawyer and Judicial Fitness, Feb. 10, 2012; Charleston County Bar Ass'n, Ethics CLE, Feb. 3, 2012; SC Bar, Panel on Lawyer Confidentiality, Jan. 19, 2012; Nov. 15, 2011, SC Workers Comp. Comm., Legal Ethics; Richardson Patrick-Sponsored CLE, Charleston, SC, April 29, 2011; National Ass'n State

Securities Administrators, Ethics in Securities Litigation, Charleston, Jan. 24, 20011; Richland County Legal Ethics Update, Nov. 5, 2010; S.C. Law Review Symposium, Judicial Recusal, Oct. 21, 2010; League of Women Voters, Lecture on Judicial Selection, Oct. 8, 2010, Charleston, S.C.; KershawHealth Board of Directors, Advice on Your Duties as Board Members, July 15, 2010, Camden, SC; American Ass'n of Matrimonial Lawyers, Ethics in Marital Cases, March 19, 2010 (Aruba), John Belton O'Neall Inn of Court, Ethics Lessons Taught by Lawyers, Nov. 17, 2009; South Carolina Defense Trial Lawyer's Ass'n, Judicial Selection in South Carolina, Nov. 7, 2009; Richland County Bar Ass'n, Legal Ethics, Nov. 6, 2009; South Carolina Legislature Employees, Legal Ethics Update, Oct. 21, 2009; Budget & Control Board, Ethics Lecture to SC State Employees, Oct. 2, 2009; South Carolina Bar, Family Law Ethics Update, Sept. 18, 2009; Motley Rice Law Firm, Legal Ethics Update, Sept. 11, 2009; South Carolina Judicial Selection Commission, Judicial Ethics, July 31, 2009; John Belton O'Neall Inn of Court, Ethics of Advertising Firms, Jan. 20. 2009; S.C. Bar, Ethics Presentation "Business Lawyer Horror Stories, Nov. 21, 2008; Participant, Mutual Fund Industry Regulation Roundtable, Chicago-Kent Law School, Nov. 7, 2008; SC Legislature, Ethical Duties of Legislative Employees, Oct. 2, 2008; SC Bar, Dealing with Ethical Duties When Dealing with Pro Se Parties, Oct. 10, 2008; Richardson Patrick Local Counsel CLE, Litigation Ethics, May 2, 2008 (Charleston, SC); Inst. of Public Utilities, 39th Ann. Reg. Policy Conf., Panel on Equity and Responsibility in the Public Utilities Sector (Charleston, SC), Dec. 3, 2007; S.C. Attorney General's Office; Litigation Ethics, Nov. 9, 2007; Richland County Bar, Ethics Update, Nov. 2, 2007; SC Bar, Litigation Ethics, Oct. 26, 2007; S.C. Children's Law Center, Ethical Problems in the Child Abuse Area, Oct. 19, 2007; National Ass'n of Medicaid Fraud Control Units, Ethics and the Government Lawyer (Savannah, Ga.), Oct. 1, 2007; SCACPA Litigation Conf., Litigation Ethics (Kiawah Island, SC), Sept. 21, 2007; S.C. Circuit Court Judges, May 17, 2007, Practice Tips in Civil Litigation; Energy & Mineral Law Foundation, May 15, 2007, Panel Member, Legal Ethics, 2 hr.; S.C. Government Investigators, Ethical Duties of Investigators, Feb. 23, 2007; S.C. Bar, Employment Law Section, Ethics Update, Jan. 26, 2007; S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004;

NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions
Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service
Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees
Promotion and Tenure
Faculty Welfare

Annuities and Insurance
Budget Committee

Law School Committees
Faculty Selection
Academic Standing
Minority Student Affairs
Executive Committee
Dean Evaluation Committee
Dean Search Committee
Chairman, Supreme Court Commission on CLE and Specialization(1980-83)
President, Leaphart Elementary School PTO (1983)
Chairman, Irmo Middle School School Improvement Council (1985)
Member, Irmo Middle School School Improvement Council (1985-89),
President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member Executive Board (1988-93)
Member, Irmo High School-School Improvement Council (1988-93)
Founder and Past-president, University of Notre Dame Club of South Carolina

Lexington District Five and South Carolina State School Volunteer of the Year 1993

TIMELINE OF V.C. SUMMER PROJECT'S FAILURE

Feb. 12, 2004: The South Carolina General Assembly passes a bill that creates the Office of Regulatory Staff, which replaces the state consumer advocate in representing the interests of the public in utility rate cases.

April 19, 2007: The General Assembly passes the Base Load Review Act. The bill makes it easier for utilities to raise rates to pay for nuclear reactors while they are under construction and to charge ratepayers for their investments in plants that are not completed.

March 27, 2008: South Carolina Electric & Gas, a subsidiary of SCANA, applies to the Nuclear Regulatory Commission for a Combined Construction and Operating License to build two 1,100 MW AP1000 pressurized water reactors (Units 2 and 3) at the V.C. Summer Nuclear Generating Station.

May 27, 2008: SCE&G and Santee Cooper announce they have reached an engineering, procurement and construction contract with Toshiba-owned Westinghouse Electric Company. The reactors are originally projected to cost $9.8 billion.

May 30, 2008: SCE&G requests the Public Service Commission to approve the first rate increase associated with the nuclear project.

October 2008: The Office of Regulatory Staff recommends approval of the project, and the PSC allows SCE&G to begin site work.

February 2009: The PSC approves the expansion plan. According to the plan, construction is expected to start in 2012, Unit 2 is expected to begin operations in 2016, and Unit 3 is expected to begin operations in 2019.

December 31, 2011: SCE&G announces the first project delay, citing the need to redesign nuclear modules, as well as production and manpower issues.

March 2012: The NRC approves the construction license for the two proposed reactors. The reactors are now expected to begin operations in 2017 and 2018.

March 9, 2013: Construction of Unit 2 officially begins. It is the first reactor to start construction in the U.S. in 30 years.

November 2, 2013: Construction of Unit 3 officially begins.

October 2014: SCANA announces a one-year delay and extra project costs of $1.2 billion. The delay is attributed to the fabrication and delivery of structural modules. Expected completion is revised to late 2018/early 2019 for Unit 2, and a year later for Unit 3. The state Supreme Court rejects a legal challenge to the Base Load Review Act.

EXHIBIT 2

October 2015: SCE&G and Santee Cooper push back expected completion dates to 2019 and 2020.

February 2016: SCANA and Santee Cooper commission the Bechtel Report, which outlines Westinghouse failures and accuses the utilities of insufficient oversight.

June 2016: SCE&G asks the PSC to approve another rate increase. The increase is approved later that month.

July 2016: SCE&G requests the last of 9 rate hikes to fund the project. The Office of Regulatory Staff and S.C. Public Service Commission approve the increase, but also negotiate a settlement to keep SCE&G from raising its rates until the project is finished.

February 2017: SCANA announces Westinghouse provided SCE&G with revised in-service dates of April 2020 and December 2020 for Units 2 and 3, respectively. "The completion dates provided in the new schedule are within the 18-month contingency period provided under the construction provisions of the Base Load Review Act administered by the Public Service Commission of South Carolina," SCANA says.

March 2017: Westinghouse files for Chapter 11 bankruptcy, citing $9 billion in losses from its two U.S. nuclear construction projects, including the V.C. Summer expansion project.

July 31, 2017: SCANA and Santee Cooper announce they are abandoning the $9 billion project after Santee Cooper voted to cease all construction. Customers have paid $2 billion for the reactors as part of their monthly electric bills. Analysts estimate completing construction could have ultimately cost more than $23 billion.

August 1-15, 2017: SCE&G files for an abandonment petition on August 1. As part of the petition, the utility asks the PSC to allow it to charge ratepayers $4.9 billion it has spent on the abandoned project. The Office of Regulatory Staff files a motion to dismiss the petition on August 9, and SCE&G withdraws it on August 15 with the intent to refile at a later date.

August 22, 2017: A special state Senate committee holds its first hearing on the abandoned nuclear project. The next day, a House committee holds its first hearing.

September 4, 2017: Santee Cooper gives Governor Henry McMaster a copy of the 2016 Bechtel Report.

November 16, 2017: SCANA announces a 3.5 percent electric rate cut for SCE&G customers.

December 2017: Two cases are filed regarding the $27 monthly charge SCE&G customers still pay for the nuclear project. One asks the PSC to eliminate the ratepayer charge, and the second demands that SCE&G refunds customers the $2 billion they have already paid. SCE&G argues that the charge is necessary for the utility to remain solvent and files motions to dismiss both cases. The PSC denies SCE&G's requests and orders the Office of Regulatory Staff to conduct an audit on the utility's rates.

January 3, 2018: Dominion Energy announces it will buy the embattled SCANA Corp. in a $14.6 billion deal that will include $1.3 billion in refunds to SCE&G utility customers (approximately $1,000 per customer). However, customers will still be charged higher electricity bills to pay off the debt for the project.

January 23, 2018: The S.C. House passes a proposal to strengthen the Office of Regulatory Staff and add a state consumer advocate for utility customers. "There wasn't any real advocacy on behalf of the public interest and the ratepayer," says state Rep. Peter McCoy, a sponsor of the proposal.

January 31, 2018: The S.C. House votes 119-1 to halt $37 million in monthly customer payments to SCANA. Under the terms of the agreement between the SCANA and Dominion Energy, Dominion could terminate the deal to purchase SCANA if the reactor payments from customers are stopped.

February 20, 2018: The S.C. Senate passes legislation that requires the PSC to delay its decision on SCANA's abandonment petition until December.

February 23, 2018: State electric cooperatives decide to sue Santee Cooper over ratepayer charges associated with the failed project.

March 7, 2018: The S.C. House votes for a second time to cut off the money SCANA bills its 700,000 customers for the abandoned nuclear expansion project. House lawmakers accuse the Senate's inaction of costing customers tens of millions of dollars since the House passed the first bill at the end of January. Senate lawmakers claim they are worried about bankrupting SCANA and harming the state's economy.

March 21, 2018: Dominion Energy and SCE&G submit documents to S.C. regulators indicating customers will pay an additional $3.8 billion for V.C. Summer nuclear project if Dominion buys SCANA. Approximately $1.8 billion would come from residential customers – amounting to $2,600 per household over the next two decades – and $2 billion would come from commercial customers.

April 18, 2018: The S.C. Senate agrees to temporarily cut SCE&G bills by 13 percent, as the S.C. House and governor battle over how much customers should continue to pay for the V.C. Summer project.

April 25, 2018: The S.C. House rejects the Senate's plan to cut SCE&G bills by 13 percent, demanding a larger, 18-percent rate cut.

May 10, 2018: The S.C. Senate votes to repeal the 2007 Base Load Review Act, which allowed SCE&G to charge utility customers for the reactors while they were under construction. The Senate also votes to reinstate the office of consumer advocate, which gives customers an attorney that fights for them in rate hike cases.

June 2018: A state audit finds the final tab for the V.C. Summer project could increase by as much as $421 million due to sales tax and interest SCE&G and Santee Copper still owe on materials bought for the reactors. The utilities say they will challenge the audit's findings.

June 27, 2018: The S.C. House and Senate pass a proposal to temporarily cut SCE&G electric rates by almost 15 percent. The lawmakers also agree to delay deciding who is responsible for paying for the failed reactors until December.

June 29, 2018: SCE&G files a federal lawsuit in an attempt to block the S.C. PSC from enacting the rate cut mandated by lawmakers.

July 31, 2018: One year after SCANA abandoned the V.C. Summer project, its shareholders vote to merge the company with Dominion Energy.

August 6, 2018: U.S. District Court Judge Michelle Childs denies a motion from SCE&G to block the lawmaker-mandate rate cut.

August 7, 2018: The temporary 15 percent rate cut goes into effect. According to reports, average SCE&G residential customers should see their August electric bills decrease by more than $110 due to both the cut and a one-time credit for past electricity use.

September 4, 2018: The NRC approves the transfer of the licenses for the three reactors the V.C. Summer Nuclear Station, including the two unfinished units, to Dominion. With the last federal hurdle cleared, N.C. and S.C. state regulators now control the fate of the potential sale.

September 21, 2018: The U.S. Fourth Circuit Court of Appeals denies SCE&G's request for an injunction to halt the temporary rate cuts as well as the utility's request for an expedited appeal. However, the court also rejects a request from S.C. lawmakers to dismiss the appeal entirely. Thanks to the ruling, the rate cuts will remain in place until the S.C. PSC issues its ruling on SCE&G's longer-term rates in the fall.

October 19, 2018: SC Sen. Brad Hutto, D-Orangeburg, says at an energy conference that a state judge could rule the 2007 Base Load Review Act, which enabled the V.C. Summer Project, unconstitutional. Dominion Energy said it would walk away from the deal to buy SCANA if that happened.

October 25, 2018: Dominion files an alternate plan with S.C. regulators to buy SCANA that would lower customer bills but eliminate a previously proposed $1,000 customer refund. The plan would provide a total of $1.91 billion in refunds over 20 years rather than $1.3 billion in upfront refunds.

November 24, 2018: SCANA reaches a $2 billion settlement with customers who sued over their high electricity rates. As part of the settlement, SCE&G customers will also receive $115 million that had previously been intended for SCANA executives.

December 4, 2018: SC Circuit Court Judge John Hayes gives preliminary approval to SCANA's settlement with customers; however, the settlement is contingent on the PSC approving Dominion's offer to buy SCANA.

Source: Alex Cross, The Failed V.C. Summer Nuclear Project: A Timeline, Dec. 4, 2018, *available at* https://www.chooseenergy.com/news/article/failed-v-c-summer-nuclear-project-timeline/, last visited March 8, 2018.

EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CASE NO. 2017-CP-25-0335
Richard Lightsey,	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF THOMAS H. POPE III IN SUPPORT OF CLASS COUNSELS' PETITION FOR FEES AND COSTS**
v.	)	
	)	
South Carolina Electric and Gas Company, a Wholly Owned Subsidiary of SCANA,	)	
	)	
Defendant.	)	

PERSONALLY appeared before Thomas H. Pope III who being duly sworn, deposes and states as follows:

A. BACKGROUND AND QUALIFICATIONS

1. I am the senior member of the law firm of Pope Parker Jenkins, P.A. (formerly Pope & Hudgens, P.A.), where I have practiced since 1977. I have been a member of the South Carolina Bar since November, 1974.

2. After graduating from U.S.C. Law School in 1974, I worked as an associate in the law firm of Glenn, Porter and Sullivan, a boutique litigation firm in Columbia, SC.

3. My practice has been almost exclusively litigation since 1974. I estimate that I have tried 100 cases to conclusion, whether by jury verdict or non-jury. I have handled many appeals in state and federal matters. In trials, I have represented a mixture of plaintiffs and defendants, although my primary focus has been plaintiffs. I have handled a wide array of cases including automobile and truck collisions, products liability, breach of fiduciary duty, class actions, minority shareholder oppression, professional negligence, will contests, employment disputes (wrongful discharge and discrimination), antitrust litigation, land condemnations and eminent domain, nursing home negligence, aviation, and environmental pollution. Trials of these matters have lasted anywhere from two days to four weeks. I estimate that I have tried at least 20 cases that have lasting a week or more. Many of these cases have involved more than 25,000 pages of documents, and have included complex legal and factual issues. I

have also represented a number of lawyers in disciplinary matters, and am very familiar with South Carolina's Rules of Professional Conduct for members of the Bar.

4. I have been involved in several class action cases in the last 35 or so years. The following is a description of my involvement and the nature of these cases:

(a) **Johnson v. First Family Financial Services, Inc. – Case No. 96-CP-36-115**
(Newberry County Court of Common Pleas)
I was co-counsel for the defendant in this action brought under the Attorney Preference
Statute. The class was certified and ultimately the case settled in September 2003.

(b) **Anderson Memorial Hospital v. W.R. Grace & Co. – Case No. 92-CP-25-279**
(Hampton County Court of Common Pleas)
I participated as an expert witness on the issue of adequacy of counsel. The circuit court entered an order granting plaintiff's motion to certify the class in June 2001. The case was a class action case for property damage due to asbestos involving numerous class members who were building owners.

(b) **(caption not found)** – In the 1980's, our firm represented a Georgia law firm named as a defendant in a purported class action involving alleged securities claims in federal court. The putative plaintiff class was a group of bondholders. Our firm successfully opposed the motion to certify; the court denied certification, and the case ended. Our files on this matter have since been destroyed and I do not recall the caption.

(d) **Raiden v. Felton Bank – Case No. 6:99-3222-24**
U.S. District Court for the District of South Carolina – Greenville Division
In that case, I represented the defendant bank. The case was ended when the court granted our motion for summary judgment in favor of the defendant bank in 2000.

(e) **Teresa Childers v. Century United Life Ins. Co. – Case No. 7:06-cv-03914-GRA**
This was a class action case relating to cancer insurance policies and the defendant's failure to pay benefits to the class members under a breach of contract. The case was certified and settled in the Fall of 2008.

(f) **Cathy A. Mitchell v. Conseco Life Insurance - Case No. 8:12-cv-00548-TMC**
In that case, our firm represented the plaintiff who had been denied benefits under her cancer policy. She sought to bring the action on behalf of the class, but the court denied our motion for certification in 2013 (the plaintiff's individual claim was later settled in mediation for approximately $135,000 after the certification motion was denied).

(g) **Carroll Thompson v. GAF Materials Corporation**
Case No. 8:11-cv-983-JMC; Case No. 8:11-mn-02000-JMC
In that case, I was co-lead counsel for the "Mobile Class" which consisted of all property owners with defective GAF roofing shingles in the southeastern states. The case was settled in June 2015 after almost 10 years of litigation.

(h) **KBC Asset Management NV v. 3D Systems – Case No. 0:15-cv-02393-MGL**
In late 2017, I was retained as coverage counsel for the defendant in this securities class action case. I did not make a formal appearance as counsel in the case, but assisted in effectuating a settlement. At the mediation, which I attended in New York City, the case was settled within the policy limits for $50 million. United States District Judge Mary Lewis awarded fees of 30% of the common fund.

Thompson v. GAF, 8:11-cv-009830-JMC, was the most intense and protracted of all the class actions I have litigated. The class consisted of thousands of building owners in the southeastern United States of America. The case involved several dozen depositions and included the production of approximately 90,000 pages of documents. The GAF case was taxing, complex, and defended by two of the country's most prominent firms. The case lasted nearly ten (10) years from the date of filing until settlement (three days before trial). The last 20 months of litigation included many 18-hour workdays, and weekend work. During the interim of GAF, and due to the intensity of the case, I was unable to undertake representation of several clients, including two cases on significant matters that would have yielded lucrative fees. I believe my experience in GAF gives me real-world insight into the mindset and work parameters of the case against SCE&G. Similar to my experience in GAF, in the instant case, which is far more difficult and challenging than the GAF case, several of the class counsel had to decline representation of clients in potentially lucrative cases because of the intensity of the SCE&G litigation.

5. I estimate that I have spent between 5,000 and 7,000 hours as an attorney in class action matters.

6. I have previously been qualified as an expert, and testified, on my expert opinions on the issue of the adequacy of class counsel in Anderson County Hospital v. W. R. Grace, Case No. 92-CP-25-279 (Hampton County Common Pleas), May, 2001. After my testimony, the Court granted the motion to certify the case as a class action.

7. I have tried cases in many South Carolina counties and in federal courts in Greenville, Columbia, Aiken and Rock Hill. In 1996, I became a Fellow in the American College of Trial Lawyers, and I served as chair of the South Carolina chapter of the American College from 2015-2017. I was admitted to the American Board of Trial Advocates in approximately 1998, and I served as President of

P3 THP

the South Carolina Chapter of the American Board of Trial Advocates for calendar year 2005. A copy of my resume is attached as Exhibit 1.

B. MY ASSIGNMENT AND WHAT I HAVE REVIEWED

8. I have been asked by class counsel in this matter to review relevant information and to express opinions on the reasonableness of the fees and costs of class counsel for which reimbursement is sought. I have conferred with counsel concerning their petitions and have conducted independent research. In addition, I have reviewed class counsels' physical file in this matter. My review includes the following:

a. Pleadings in the case;

b. Application for attorneys' fees and reimbursement of costs filed by class counsel;

c. Discovery requests and responses to same;

d. Motions filed and memoranda in support and in opposition to same;

e. Conferences with class counsel in person and by telephone;

f. Various other cases (including appellate cases) and statutes relevant to the ultimate settlement, including the case of Glibowski v. SCANA Corporation, USDC C/A No. 9:18-cv-273-TLW and the Florida case of Newton v. Duke Energy Florida, LLC, C/A No. 0:16-cv-60341-WPD, the Base Load Review Act, and the numerous memoranda filed by class counsel in support of their position or in opposition to filings by defendant;

g. Various filings at the PSC and Order of the PSC;

h. Settlement Agreement dated November 21, 2018;

i. Affidavit of John Alphin dated April 17, 2019; and,

j. Affidavit of Wallace Lightsey dated April 5, 2019.

9. Based on the foregoing and a careful review of the relevant documents in this extensive matter, along with my independent research, I am of the opinion to a reasonable degree of professional certainty that the fees and costs sought by class counsel are reasonable and clearly within the range of fees and costs awarded in similar cases. The specific bases of my opinion are set forth hereinbelow.

C. CASE TIMELINE AND SUMMARY OF RELEVANT EVENTS

10. From the onset, this case had the markings of a legal "perfect storm". Class counsel was faced with monumental legal barriers, severe time constraints, and very high stakes. The risks they undertook were formidable. Class counsel before and during the litigation consulted with utility law experts and law professors who informed them that the class would have a difficult time prevailing in damages against SCE&G under South Carolina law. Class counsel devised a creative legal theory based upon the unique circumstances created by the utility's decision to force the financing of the project upon the customers prior to the provision of any power. Counsel developed facts from the almost 2 million pages of documents produced, and proceeded to implement their legal theory on multiple fronts – all of which led to the settlement.

11. On July 31, 2017, SCE&G announced its abandonment of the project to construct two nuclear reactors at the V. C. Summer site in Jenkinsville, South Carolina ("the project"). Events thereafter unfolded quite rapidly. The next day SCE&G filed a petition with the Public Service Commission ("PSC") seeking to have the project construction costs deemed "prudent" so as to allow SCE&G to charge financing costs far in excess of five billion additional dollars spent for its failed project. SCE&G's decision to abandon the project, together with the relief sought in its petition at the PSC, would have left SCE&G's ratepayers with extraordinary damages and excessive rates for decades into the future. Moreover, throughout the majority of the litigation, SCE&G continued to collect exorbitant amounts from class members. This required class counsel to proceed on an expedited basis to develop evidence in support of the class claims.

12. The class action suits captioned herein were all filed in August 2017 in Hampton, Richland and Fairfield Counties. By the time of filing, substantial work had been undertaken (under almost crisis conditions) to protect the class. Matters continued to unfold both publicly and in the context of the litigation. In September 2017, the Governor released the "Bechtel Report" dated February 5, 2016. However, the report the Governor released, unknown to him, had been "scrubbed". Class counsel established during the litigation that this report had been altered and what had been provided to the

P 5 of 40

Governor was not the original report. The original "Bechtel Report" was issued on November 9, 2015. Class counsel uncovered in discovery that the original report had been substantially altered, at the insistence of the project owners, to remove damaging and unflattering comments about SCE&G's failed management of the project, and to remove reference to the projected substantial completion dates of the project, which were years behind the targets set by the project's contractors. After viewing a draft of the original disastrous report, SCE&G succeeded in forcing Bechtel to create a new "scrubbed" report, and would also downplay the role Bechtel played with regard to the project. Ultimately, Santee Cooper released the scrubbed Bechtel report to the Governor in September, 2017.

13. Portions of the original Bechtel Report which were deleted, redacted, or "scrubbed", dealt with the substantial completion dates, which Bechtel opined were not achievable given the historic performance factor of the project and general project conditions. The project had been plagued for many years with delays, cost overruns, and inefficiencies, all of which put the project in jeopardy and caused customers to pay for these inefficiencies. Also scrubbed from the original report were Bechtel's assessments of SCE&G's incompetence in managing a mega-project. The deposition that class counsel took of witness Ty Troutman revealed that SCE&G was successful in inappropriately placing pressure on Bechtel to remove its original assessment that SCE&G had been mismanaging the project for years and knew cost overruns were far greater than SCE&G was admitting publicly.

14. As discovery proceeded, class counsel was opposed by several of the finest and most respected law firms in the country (including King & Spalding, Haynsworth Sinkler Boyd, and Willoughby & Hoefer) whose approach, though appropriate and professional, was relentlessly thorough and aggressive. For example, at the hearing on SCE&G's motion to dismiss, SCE&G's counsel argued for six hours (including lunch break). Such motions in typical litigation (even complex litigation) are argued in far less time. In discovery, SCE&G produced in excess of 1million pages of documents, and an additional 700,000 pages were produced by Santee Cooper pursuant to a F.O.I.A. request. The enormous importance of this litigation – to the customers, to the defendant's investors, and to the future of the defendant company – propelled defense counsel to take every conceivable defense strategy.

15. Class counsel was faced with many hurdles along the way. In addition to being faced with highly skilled and tenacious defense counsel who were aggressively filing motions for protection, motions to dismiss and the like, they were faced with two major legal issues: (1) the Base Load Review Act (which, if found constitutional, had the potential to gut all of the class claims); and, (2) an adverse federal case in Florida was based on distinctive facts that nevertheless involved the abandonment of a project to construct nuclear generation. In Newton v. Duke Energy Florida, LLC (Case 0:16-cv-60341-WPD), the plaintiffs filed a purported class action on behalf of ratepayers of Duke Energy Florida who had been required to pay $2 billion in electric bills for nuclear plant projects that never generated power or produced any benefit for the ratepayers. In Newton, counsel for plaintiffs based their cause of action on the federal constitution in challenging a Florida advanced cost recovery statute. Counsel in Newton specifically asserted that there existed an impropriety in how the rate was set. Defendant Duke Energy filed a motion to dismiss the Newton complaint which challenged the constitutionality of the Florida advanced cost recovery statute. This Florida statute bore similarities to the Base Load Review Act ("BLRA"), but was nowhere near as all- encompassing in its ability to pass rates along to Florida customers. In its Order dated September 21, 2016, the district court granted the motion to dismiss the class action complaint with prejudice. On December 5, 2016, the court issued its Order denying the plaintiff's motion to reconsider.

16. The Newton case was a substantial hurdle to the class because if class counsel in the instant matter had not successfully distinguished the facts and theories asserted and fashioned a creative approach to challenge the BLRA based on South Carolina law and the South Carolina Constitution, it was quite possible the class complaint would have been dismissed in this matter.

17. There were also major discovery issues. Class counsel had to organize, review, and understand the relevant documents from the voluminous document production by SCE&G and Santee Cooper, which exceeded 1.8 million pages. I am not aware of any case in South Carolina that has involved this many documents.

18. Class counsel devised a software program to enable them to search the documents so that they could be utilized. Class counsel's team of lawyers included Greg Galvin, a lawyer who focuses his civil practice on technological and electronic discovery issues, including server capabilities and server data access. Mr. Galvin partnered with a colleague, Wayne Lilly, who has an extensive background in developing computer coding for search capabilities. The two of them worked together to develop a new computer program which contained powerful sorting and search mechanisms that scanned the documents for any electronic metadata the documents contained. Then they created a password protected platform where searches could be run and placed that platform online, to be accessed via the internet by the class counsel team who were all assigned passwords to access the tool. The search engine and the data collected from the million plus pages of documents allowed their team to sort documents using any basis they chose, whether by email sender, recipient, document custodian, date, key terms, or document type. Prior to all depositions and hearings, multiple searches were run to mine the data for relevant documents including while depositions were in process, which was done on a number of occasions as new topics or terms were introduced.

19. After receiving and organizing the massive number of documents produced by SCE&G, class counsel deposed critical witnesses at SCE&G, and Bechtel. At each of these depositions, there were two lawyers in attendance from class counsels' firm, but as many as 10-15 lawyers present representing SCE&G, Santee Cooper, Central Electric Cooperative, the State of South Carolina, and/or the deponent.

20. In late Spring of 2018, class counsel also brought a RICO action in district court captioned Glibowski v. SCANA Corp., et al. The complaint in that case was crafted based on facts learned in this litigation and assisted in applying pressure towards settlement. Under the RICO statutes, should plaintiffs have prevailed, they would have been entitled to treble damages and attorneys' fees against not only SCANA but also SCANA's key officers who were named defendants. Based upon the facts and my

P 8 TNP

review of the Glibowski complaint, it appears quite likely that the facts, developed through witnesses at trial, would have led to an adverse result for all defendants in that case.

21. Class counsel uncovered a voicemail from SCANA accountant Carlette Walker in the records that were produced in discovery from SCE&G and Santee Cooper. After obtaining and listening to Ms. Walker's audio tape (which is best characterized as a "smoking gun"), class counsel took her deposition, where it was revealed that SCE&G had forced Ms. Walker to file false testimony at the Public Service Commission with regard to the nuclear project's costs and schedule – the critical issues that led to the demise of the V. C. Summer project.

22. After numerous and protracted motions hearings, and while discovery was in its infancy, the PSC scheduled hearings on the abandonment of the nuclear project, set to begin on November 1, 2018. (The hearing ultimately ended on November 21, 2018.)

23. Class counsel provided substantial help to ORS counsel to enable ORS to be prepared for the November hearing. Class counsel took depositions and shared information with ORS in a joint effort to succeed at the PSC. The affidavit (dated April 5, 2019) of Wallace Lightsey, who was retained to represent ORS in March 2018, outlines the dilemma that Mr. Lightsey faced as counsel for ORS. The PSC litigation schedule required him to become familiar with the intricate regulatory interplay among ORS, SCE&G, and the PSC spanning over 10 years and to be familiar with the BLRA and its effect on rate regulation and the project's complex interrelations of energy and construction law, project financing, and lengthy construction history in order for ORS to be prepared to present its case a few months later at the PSC.

24. Mr. Lightsey and his legal team had to rely on class counsel to address this dilemma. ORS worked closely and often with class counsel. As set forth in the Lightsey affidavit:

a. Class counsel reviewed the mountain of documents it received from SCE&G and flagged and commented on the significant documents so ORS could be prepared;

b. Class counsel shared with ORS their mental impressions, trial strategy and their timeline; counsel provided to ORS updated trial strategy work product which ORS used in its litigation at the PSC;

c. Class counsel hosted strategy meetings with ORS, identified key witnesses for ORS and often had daily contact with the ORS legal team;

d. Class counsel scheduled key depositions to be used by ORS at the PSC hearings in November;

e. Class counsel assisted ORS with document discovery which saved ORS litigation costs and "allowed [ORS] to streamline discovery and focus [its] case.";

f. ORS' ability to be successful at the PSC was tied to Class counsel's active involvement with documents, depositions, and trial strategy.

25. From my review of the records, it is clear to me this litigation involved a complexity unlike any case in which I have been involved or seen, including: (a) enormous stakes; (b) a highly visible public project that impacted 700,000 customers; (c) a major legal defense to plaintiffs' challenge to the constitutionality of the Base Load Review Act which, if successful, would have torpedoed all claims of the class; (d) discovery involving over 1.8 million pages of documents, which had to be organized, reviewed, and made usable in the depositions of witnesses, including defendant's officers and employees; (e) participation in proceedings of the PSC by class counsel which were critical to a settlement; and, (f) class counsels' initiation of the RICO case, Glibowski, which paralleled the underlying litigation and which provided additional incentive for SCE&G to settle.

26. Because of class counsel's efforts described herein, and after many days of settlement talk and mediation, a settlement agreement was signed on November 21, 2018. Notice of the settlement has been given to the class, and to date no objection has been filed to counsel's position seeking a fee award of an amount "not to exceed 5%" of the Common Benefit Fund and reimbursement for costs.

D. ANALYSIS OF THE FACTORS UNDER *JACKSON V. SPEED*

27. Our Supreme Court has determined the factors to be used in assessment of a reasonable Fee, as set forth in Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), are as follows:

1. nature, extent and difficulty of the case;
2. time necessarily devoted to the case;
3. professional standing of counsel;

P 10 of 18

4. contingency of compensation;
5. beneficial results obtained; and,
6. customary legal fee for similar service.

I have discussed below all these factors, and it is my opinion that a fee of 3% of the total benefit to the class is reasonable.

1. The Nature, Extent and Difficulty of the Case

28. This case was not based on "settled law". It was based on novel theories and a delicate weaving together of concepts in an extremely complex factual and legal context. To call the case "difficult" would be an understatement. Class counsel took not only a "leap of faith", but an enormous risk of defeat when they filed these actions.

29. The case was extraordinarily difficult from the outset. The BLRA itself contained an abandonment clause that posed a substantial hurdle to many of the Plaintiffs' theories. Class counsel had to devise a strategy for discovery and litigation which would establish that that statute was unconstitutional. In the early stages of the case, class counsel consulted with a utility law expert, Professor Nathan Richardson at the University of South Carolina Law School, who informed them that the BLRA set an unprecedented mechanism for rate recovery, unlike anything he had seen in the historical context of utility ratemaking, and which went further than the two (2) other states who had passed laws intended to yield similar results. In addition, Josh Eagle, professor of Constitutional and Environmental law at the University of South Carolina, consulted for his opinion on the Constitutionality of the BLRA under the South Carolina constitution. While he ultimately concluded that portions of the BLRA were likely unconstitutional, he also appreciated the difficulty encompassed by the legal arguments. In addition, the issue of whether a finding of unconstitutionality would apply prospectively versus retroactively was subject to vigorous debate.

30. The legal and pretrial issues that class counsel were confronted with in the GAF case I was involved in for ten years were practically routine in comparison with the monumental challenges that class counsel faced in the instant case described herein.

Class counsel attacked the constitutionality of the BLRA under the South Carolina Constitution. Furthermore, class counsel deposed several key SCE&G witnesses (such as Steve Byrne, Chief Nuclear Engineer, Kenneth Browne, Sheri Wicker, Margaret Felkel, and Carlette Walker) who provided testimony that SCE&G had knowingly provided false financial projections to the PSC, that it knew its cost projections and timelines were flawed, and that SCE&G caused the Bechtel Report to be scrubbed to remove references to SCE&G's mismanagement which SCE&G had been aware of for years, but had kept secret.

31. The fact that class counsel in the instant case was able to avoid the Newton holding against the excellent briefing and arguments of prestigious and highly regarded defense firms was nothing short of exceptional (perhaps even miraculous). It cannot be said that class counsel was faced with anything other than one of the most difficult cases in South Carolina legal history. I have learned from class counsel that they approached a utility expert who opined that the class would have great difficulty overcoming the BLRA and had a limited chance of success. Dick Harpootlian, one of South Carolina's leading class action lawyers, declined to be involved in the case for the same reason. (Page 38 of Class Counsel's Application.)

32. I have reviewed the docket sheets of these three cases (over 800 entries) and the sheets of the RICO cases (over 160 entries). These reflect numerous motions filed by SCE&G attacking and challenging every factual and legal argument advanced by class counsel.

33. Stating the obvious, class counsel successfully advanced a very complicated legal theory, in the face of very difficult odds. Their litigation/settlement plan was executed to perfection.

34. Class counsel was opposed by a team of distinguished and excellent law firms from South Carolina and Georgia. SCE&G counsel did their job well by testing every factual allegation and by briefing thoroughly their legal points. Their vigorous representation made a very difficult case even more difficult.

P. 12

35. As United States District Judge Joe Anderson noted in Montagne v. Dixie National Life Insurance, 2011 WL 3626541 (D.S.C. 2011), "the riskier the case, the greater the justification for a substantial fee award."

2. The Time Necessarily Devoted to These Cases

36. To prepare these cases properly required a major commitment of time and resources by class counsel. Based on the affidavit of John Alphin and the records submitted by the various class counsel, over 24,700 attorney hours were expended in prosecuting this class action and an additional 2,200 hours of paralegal time. The time spent was necessary due to the myriad of issues, extensive discovery, voluminous document review, the unique role that class counsel played at the Public Service Commission proceedings, and the fact that this case was proceeding on a novel theory. The case involved many "moving parts," including participation in settlement negotiations by Dominion Energy which was not a party to the action but which was proposing at that time to purchase SCE&G, all while SCE&G was threatening bankruptcy and financial collapse which would leave the customers with nothing. This merger and the purported financial demise of SCE&G were among the most critical factors pressing the schedule and pace of this case. On several occasions, Dominion threatened to walk away from the merger, which added great tension and drama to the negotiation.

37. Class counsel coordinated their efforts and divided the various aspects of the case to avoid duplication; this proved to be both expeditious and successful. Time was of the essence in this case. Had this litigation been conducted at a less than intense pace, it would have involved massively higher damages to the ratepayers. The amount the ratepayers were charged by SCE&G during the pendency of this litigation amounted to approximately $37 million per month. By proceeding expeditiously, class counsel was able to reduce overall damages to the ratepayers.

38. In view of the number of hours worked by class counsel and their staffs, I was struck by the intensity of their efforts. It appears that several class counsel were required to work essentially full-time around the clock from August 2017 through November 2018. Because class counsel made this time commitment as a matter of necessity, it followed that several of them had to turn away new legal

P 13 THP

business. This resulted in "lost opportunity costs" directly related to this litigation. In fact, one of the class counsel had to hire an associate to try to keep his "normal" practice alive while he pursued this class litigation.

3. Professional Standing of Counsel

39. It is my opinion that the class was represented by uniquely qualified, experienced counsel. I will not repeat herein all of the specific information set forth in class counsel's application for fees. Suffice it to say that class counsel represents the top echelon of complex litigation lawyers in South Carolina.

40. The Strom law firm consists of very experienced lawyers; its lead litigator, Pete Strom, is lead co-counsel for the class. He has over 35 years of litigation experience, particularly in class actions. He and his law firm provided the organizational skill and experience necessary to create an effective structure for prosecuting the case and were particularly important in participating with ORS at the Public Service Commission.

41. The firm of Richardson Patrick Westbrook & Brickman is widely regarded as one of South Carolina's leading firms in complex litigation. Both Terry Richardson and Ed Westbrook have participated in dozens of class actions, including the nationwide tobacco litigation a few years ago which resulted in a settlement of over $200 billion. Richardson and Westbrook each has over 40 years of class action experience in state and federal courts, including nationwide class actions. They are widely regarded as among the finest "big case" lawyers in the state.

42. Speights & Solomons is a firm with whom I have worked on several cases, including the federal court class action case of Brooks v. GAF, Case No. 8:11-mn-02000-JMC, which was settled after almost 10 years of litigation. Dan Speights, lead counsel with the firm, has been involved nationwide in complex class actions and mass tort litigation for decades. He is regarded throughout South Carolina as a highly creative, tenacious, complex case trial lawyer who has won numerous victories in state and federal class actions. I practiced law with Dan early in our legal careers and have kept up with him professionally and personally for all the ensuing years. I can say without question that Dan knows how to

P-14

successfully prosecute class actions better than anyone that I know. His partner, Gibson Solomons, has participated in and litigated numerous class actions over a number of subject areas and is also highly experienced and well regarded as a top-notch class action lawyer in his own right. Mr. Solomons led the litigation team in this matter, coordinating the myriad depositions, and arguing the critical Motion to Dismiss, which had every possibility of going against the Plaintiffs, given the legal hurdles involved.

43. The firm of Lewis Babcock, L.L.P. consists of very experienced class action attorneys, in both state and federal cases. Prior to his early demise in 2017, Cam Lewis wrote the book on class action practice. The current senior member of the firm, Keith M. Babcock, Esquire, has practiced over 43 years and has handled many complex cases, including class actions. His reputation for excellence in big cases is well-known throughout the state.

44. Vincent Sheheen is an excellent lawyer who brought his talents and legislative experience to bear in the settlement negotiations (which consumed many days in both formal mediation talks and informal meetings and telephone negotiations).

45. I have never worked with the other class counsel law firms listed in the Class Counsel Application (including McGowan, Hood & Felder and the Bell Law Group), but I know by reputation that these firms are well-known for successfully trying and/or settling major class actions. Whitney Harrison of McGowan, Hood, and Felder tenaciously led the charge arguing against the constitutionality of the BLRA, and was faced by a formidable adversary – a constitutional law attorney flown in from Washington D.C. by defense counsel.

46. In summary, class counsel, individually and collectively, are extremely well-regarded, successful, and uniquely capable of handling a case of this magnitude. The class counsel "team" took on a giant, proceeding on a very complex (some said "questionable") legal theory that resulted in a settlement that would not have been possible but for their skill and determination.

4. Contingency of Compensation

47. Plaintiffs' counsel agreed to undertake this case on a contingency based with substantial risks that they would not be paid at all. If our court had concurred with the analysis of the U.S. District Court in the Newton case in Florida, this case would have been dismissed, and the class would have recovered nothing, nor would the lawyers have been paid.

48. This is a perfect case for a contingency fee because the claims of the 700,000 class members would have each been very small, and no one would have taken the case on an hourly basis because the client could not have afforded it.

49. There are two methods of determining legal fees: (a) hours expended/lodestar method; and, (b) percentage of the common fund. In my opinion, the lodestar method is not appropriate in class action cases such as this. This method is appropriate where a lawyer is working for pay that is based on time spent rather than the result achieved. The Application of class counsel cites cases showing that the lodestar method is in disfavor in class action cases and I will not rehash that discussion.

50. The Settlement Agreement recites the parties have agreed class counsel will request "an amount not to exceed 5%" of the total Common Benefit Fund, and it seems to be settled that the percentage of the common fund is the appropriate method of determining fees in this case.

51. Case law in South Carolina and in the federal courts make it clear that the percentage of the fund method is appropriate here. In Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003), the Supreme Court upheld a percentage fee of 28% assessed against the common fund. See also, Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008) (the court noted that when a common fund has been created, the fund pays the plaintiffs' attorneys who created it, using a percentage method).

52. In Global Protection Corp. v. Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (1998), our court affirmed the award of one-third of the damages, noting that a contingency fee arrangement is common in complex cases and that such contingency fees range from one-third to one-half of the recovery. Id. at 161, 489.

p.16

53. In Anderson Hospital v. W. R. Grace, Inc., Case No. 92-CP-25-279 (Hampton County Court of Common Pleas), this court approved a one-third contingent fee from a class action fund of $57 million. See also, Colleton Prep. Academy, Inc. v. Hoover Universal, Inc., Case No. 2:04-cv-00531 DCN (2009) where U.S. District Judge Norton awarded fees of one-third ($290,000) of the damage award of $871,000.

54. Important to this inquiry is the risk assumed by class counsel that they would recover nothing. Our Supreme Court in Condon affirmed a fee of 28% of the common fund, noting as follows:

> "Although Respondents were awarded a very substantial sum ($2.1 million) for their work, Respondents achieved a good result for the class, including securing the prospective enforcement of the tax exemption, and took the risk of not earning any fee at all." (emphasis added.)

55. Senior U.S. District Judge Joe Anderson also pointed out that risk is a significant factor in justifying a percentage of the fund method for setting fees. In Montague v. Dixie National Life Insurance, 2011 WL3626541 (2011), after granting summary judgment in favor of the class, he awarded fees of one-third of the fund. He wrote:

> "Courts recognize that the risk that there is no recovery is a major factor in awarding attorneys' fees and it is the primary aspect of a contingency fee case that supports a percentage fee recovery. "Courts note that the riskier the case, the greater the justification for a substantial fee award."

5. Beneficial Results Obtained

56. In my opinion, this is the most important factor in determining the reasonableness of a fee award. In this case, class counsel achieved unprecedented success on a novel theory against enormous odds. In my view, the settlement should be based on that success. Through persistence, ingenuity, and many hours of hard work, class counsel achieved the following success by settlement:

(a) Cash	$115 million
(b) Property	Valued at between $60 million - $85 million
(c) Reductions in future electric bills for ratepayers	$2 billion

This settlement is the largest settlement, in terms of benefits to the class members, in South Carolina history. It was made possible directly from the extraordinary efforts of class counsel.

57. I understand from class counsel that, as a result of the settlement, the monthly bill of the average customer of SCE&G will be reduced from what it was in May 2017 - $147.53 - to $125.26 per month, a reduction of approximately 15%. This is a tangible, meaningful benefit to many thousands of SCE&G customers which is directly attributed to the excellent work of class counsel.

58. The class notice provided that class counsel might request an amount "not to exceed 5%" of the Common Benefit Fund. Since this notice went to all members of the class, it is worth underscoring as of this date that no class member has objected to a fee of up to 5% of the total benefit.

59. Based on the fee application of class counsel, it is my understanding that they are seeking a fee of 3% of the Common Benefit Fund. As set forth herein, I regard this fee request as entirely reasonable.

60. It is worth noting that SCE&G overcharged its rate payers over $1 million per day for the nuclear plant financing costs.

61. The beneficial results achieved in the settlement agreement were significant because of their magnitude and the fact that the settlement was achieved expeditiously.

6. The Customary Fee for Similar Services

62. It is my opinion that the 3% fee requested in this case with a $2.2 billion settlement is at the low end of the range of acceptable fees.

63. In traditional class action cases, courts have routinely approved contingency fees of one-third or more of the recovery. I am personally familiar with two cases in which I was involved where courts approved fees of one-third and 40%. In Anderson Memorial Hospital, supra. where I testified as an expert, the Court approved a fee of one-third where the common fund settlement was $57 million. In Fairey v. Exxon, Corp., Case No. 94-CP-38-118 (Orangeburg Common Pleas Court), Judge Goodstein awarded a fee of 40% of a $30 million common fund settlement. My involvement in that case was as guardian ad litem for certain absent class members, and I am familiar with the facts of that case and the work and efforts of Dan Speights, who was lead class counsel. Class counsel's work in that case was exemplary, as it is here. The Fairey case was complicated, intense, and protracted.

P 18 THP

64. The cases cited in class counsel's Application are further supportive of the customary fees for similar cases.

65. The "upfront" portions of this common fund settlement consist of $115 million of cash and property valued at $60-$85 million. If one assumes that the real property is sold for $85 million, then the upfront value of the common fund is $200 million. If a one-third fee is applied to this, the fees would be $66.6 million – almost the same as a fee of 3% of the total common benefit (including future rate relief).

66. I agree with the analysis in the Application of class counsel on the subject of "mega cases", where the range of fees is generally 6.5% to the 9.5% (p. 30 of Application). Since the case at bar could be categorized as "mega," a fee of 5% to 7% would be warranted; the 3% requested here is very reasonable and appropriate.

SUMMARY

67. In this case, class counsel had to deal with complicated and arcane facts surrounding the V.C. Summer project collapse and had to fashion a legal position in a groundbreaking area of the law involving the uncertainties of the BLRA. The fact that they succeeded in achieving a settlement with a class benefit of $2.2 billion in the face of these obstacles makes the settlement reached even more remarkable.

68. This has been a very difficult and unusual case against excellent, highly competent, and thorough adversaries. Class counsel undertook to do what many thought was an impossible task, and they did the job extremely well. Based on the Jackson v. Speed fee factors, it is clear that the fee request of class counsel in the amount of 3% of the total benefit is reasonable and entirely appropriate. Also, class counsel incurred out of pocket expenses of $864,912.40 in the course of handling these three class action cases. Likewise, it is my opinion that these costs advanced by counsel were reasonably incurred, fair, and deserving of court approval.

69. All of the opinions I have expressed herein are to a reasonable degree of certainty in the field of complex class actions.

P 19 TNP

70. I note that this affidavit is addressed as of the date signed below. I reserve the right to amend or supplement my opinions and supporting reasons for same if and when additional information becomes available.

SWORN to before me this 17th day of April 2019

Nina Elizabeth Brooks Alexander (L.S.)
Notary Public for South Carolina
My commission expires: 1/29/2025

Thomas H. Pope III

Thomas H. Pope III

Member

Pope Parker Jenkins, P.A.
1508 College Street – P.O. Box 190
Newberry, South Carolina 29108
Telephone: (803) 276-2532
Fax: (803) 276-8684
tom@ppjlaw.com
www.ppjlaw.com

Practice Areas

Trials in all federal and state courts; Personal Injury; Wrongful Death; Products Liability; Business Litigation; Professional Negligence; Condemnation; Attorney Disciplinary Matters; Class Actions.

Peer Review

AV Preeminent Rating by Martindale Hubbell.

Education

University of South Carolina, J.D., 1974, University of the South, B.A., 1968; Admitted to Practice, South Carolina, 1974

Memberships

- Fellow, American College of Trial Lawyers
- (1995-Present; Chair, South Carolina Chapter 2015-17)
- American Board of Trial Advocates
  (Advocate; President, South Carolina Chapter, 2005)
- Listed in South Carolina Super Lawyers (2008-Present)
- Newberry County Bar (President, 1984)
- American Bar Association (Member, Litigation Section)
- South Carolina Bar; South Carolina Trial Lawyers Association
- The Association of Trial Lawyers of America
- Fourth Circuit Judicial Conference (Permanent Member)

Military

Lt. j.g., USNR, 1968-1971; Officer in Charge, Swift Boat (PCF 102) Mekong Delta, VietNam (1969-1970)

Other

South Carolina Board of Bar Examiners, 2006-2014; South Carolina Senate, Member, 1984-1992; Joint Judicial Screening Committee, Chairman, 1991-1992; South Carolina Bar Judicial Qualifications Committee, Chair 1992-1993; University of the South, Member, Board of Trustees, 1999-2002; Certified Mediator and Arbitrator.

Litigation Experience

Products liability; Auto and truck collisions; professional negligence; business torts; breach of fiduciary duty; class action; eminent domain; wrongful death; defamation; environmental; employment; and general litigation.

Awarded The Jeter E. Rhodes, Jr. Trial Lawyer of the Year in February 2018 by the South Carolina Chapter of America Board of Trial Advocates.

EXHIBIT 1

EXHIBIT 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CASE NO.: 2017-CP-25-335
	)	
Richard Lightsey, LeBrian Cleckley, Phillip Cooper, et al., on behalf of themselves and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**AFFIDAVIT OF RICHARD A. HARPOOTLIAN**
	)	
South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, SCANA Corporation, and the State of South Carolina,	)	
	)	
Defendants,	)	
	)	
South Carolina Office of Regulatory Staff,	)	
	)	
Intervenor.	)	
	)	

Richard A. Harpootlian, being duly sworn, deposes and says:

1. I am managing partner of Richard A. Harpootlian, P.A. at 1410 Laurel Street, Columbia, South Carolina 29201.

2. I have been a practicing attorney in South Carolina for 44 years, during which I have tried hundreds of cases as a prosecutor, defense attorney, and civil litigator. I began my career as a prosecutor in the Fifth Circuit Solicitor's Office where I became deputy solicitor and was tasked with the administration and supervision of over 20 prosecutors and staff members. As the Fifth Circuit's chief homicide prosecutor, I personally prosecuted hundreds of murder cases, including 12 death penalty cases, and defended one of those convictions on appeal before the United States Supreme Court. In 1990, I was elected as Fifth Circuit Solicitor where I served until 1995. During my service, I personally prosecuted and obtained convictions in a number of high-profile murder, drug, and public corruption cases. For the last 23 years, my private civil and criminal practice has earned state and national recognition for efforts on behalf of civil litigants and criminal defendants, including a number of multi-million-dollar verdicts and settlements, including class-action work. My class-action work has resulted in $68 million in foreclosure benefits to U.S. servicemembers, *Rowles v. Chase Home Fin., LLC*, C/A No. 9:10-

cv-01756-MBS, 2012 WL 80570 (D.S.C. Jan. 10, 2012); $7.9 million paid to cancer insurance policyholders, *Ward v. Dixie Nat. Life Ins. Co.*, 595 F.3d 164 (4th Cir. 2010); and a $31.8 million recovery for a class of retirees, *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2006), among others.

3. In addition to my litigation practice, I have been active in South Carolina politics including serving on Richland County Council from 1986–1991, and as Chairman of the South Carolina Democratic Party from 1998–2003 and from 2011–2013. Most recently, I was elected to the South Carolina Senate where I presently serve.

4. My views as a commentator on law and politics are regularly sought by national newspapers and television programs. I have appeared on 60 Minutes, Good Morning America, ABC Nightly News, NBC Nightly News, Dateline NBC, and various CNN, MSNBS, CNBC, and Fox News broadcasts.

5. I have given numerous lectures for the South Carolina Bar Association on topics including class action litigation and criminal defense. For 20 years, I lectured new members of the Bar during the Bridge the Gap program. I have also served as an Adjunct Professor at the University of South Carolina School of Law.

6. At the time of the cancellation of the V.C. Summer nuclear project in Summer 2017, I was approached by a fellow lawyer about the prospect of becoming involved in this litigation on behalf of the ratepayers saddled with the cost of the project's failure. That lawyer was a member of the attorneys' group that eventually became class counsel in this litigation.

7. After analyzing the situation and evaluating the prospect for ratepayer recovery, I declined to become involved in the litigation because I believed the prospect of success was remote.

8. I understand that class counsel has secured a settlement for the class. I believe it is an excellent result. Class counsel took, in my view, a significant risk in accepting this representation and has produced a successful and laudable result that other lawyers of lesser skill would not likely be able to replicate.

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

Richard A. Harpootlian

SWORN to before me this 3rd day of April, 2019

Notary Public for South Carolina
My commission expires: July 19, 2022

EXHIBIT 9

STATE OF SOUTH CAROLINA)) COUNTY OF HAMPTON)) Richard Lightsey, LeBrian Cleckley,) Phillip Cooper, et al., on behalf of) themselves and all others similarly) situated,)) Plaintiffs,)) v.)) South Carolina Electric & Gas) Company, a Wholly Owned) Subsidiary of SCANA, SCANA) Corporation, and the State of) South Carolina,)) Defendants,)) South Carolina Office of Regulatory) Staff,)) Intervenor.)	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-25-335 **AFFIDAVIT OF** **WALLACE K. LIGHTSEY**

1. I am an attorney with Wyche, P.A., where I have practiced law for thirty-three years. My practice focuses primarily on complex civil litigation, in which I have participated in many different types of cases involving novel issues of law, shareholder and minority owner oppression, intellectual property disputes, media and First Amendment litigation, and general business and commercial litigation. I make this affidavit based on my own personal observations and knowledge.

2. On March 22, 2018, my firm was retained by the Office of Regulatory Staff (ORS) to serve as litigation counsel for the S.C. Public Service Commission (PSC) hearings on the abandonment of new nuclear development construction at the V.C. Summer site in Jenkinsville, South Carolina ("the Project"). ORS represents the public interest in utility regulation. This representation required us to become familiar with the intricate regulatory interplay among ORS, SCE&G, and the PSC spanning over a decade, along with appreciating the nuances of the Base Load Review Act (BLRA) on utility regulation and rates and also the Project's complex and protracted construction schedules and milestones. This was no easy undertaking given the complexity of energy and construction law, and the Project's lengthy construction and financing history.

3. Beyond digesting voluminous background and legal material, we were significantly constrained by the litigation timeline, requiring a decision by the PSC in December 2018,

and the hearing that was set to begin November 1, 2018. When we were retained, there were less than six months to complete discovery, identify key witnesses, and provide pre-filed, direct testimony for ORS's witnesses. Unlike traditional civil litigation, the PSC required direct testimony to be pre-filed beginning in August 2018, which required a tremendous undertaking to master the material and memorialize testimony. Given these limitations, we turned to Class Counsel and others with common legal interests for support. Initially, Class Counsel assisted by helping us identify and access key witnesses and learn the fundamental facts of this case. Early on, we had multiple meetings and calls with Class Counsel to discuss the BLRA, the import of SCE&G requesting revised rates, the modifications to the construction and costs schedules, and how to best address legal positions taken by SCE&G in separate legal proceedings (e.g., the PSC interim rate order appeal to the 4th Circuit). Through these communications we were able to better appreciate the statutory scheme. Understanding the ways in which SCE&G used the BLRA allowed us to identify questionable representations made to the PSC by SCE&G, which supported our analysis on prudency and requested relief.

4. Class Counsel also provided their mental impressions and trial strategy through a timeline and other work product materials. The timeline and materials, which essentially served as Class Counsel's litigation playbook, contained detailed mental and legal impressions and analysis of the case. Over the next five months, Class Counsel provided updated trial strategy work product. In many ways, this work product served as an indispensable resource in our litigation at the PSC. This is evidenced by our use of this information in numerous depositions and witness testimony, as well as the filing of underlying and support materials at the PSC.

5. Additionally, Class Counsel hosted several strategic meetings. For example, members of Class Counsel met with ORS's litigation team on one occasion to discuss our litigation plan for almost six hours. This included Class Counsel sharing their theories of the case, prior briefing, and identifying additional key witnesses. After identifying approximately twenty-six potential key witnesses, Class Counsel agreed to execute their proposed discovery and deposition plan to ensure ORS met its compressed timeline. Class Counsel also allowed us to attend their litigation counsel meetings. At several meetings, Class Counsel's trial strategy and theory work product was discussed along with the pertinent documents for upcoming depositions. Additionally, we were often in daily contact with Class Counsel as litigation progressed. Through the course of these communications, Class Counsel would provide continuous updates on discovery, their theory of the case, and other pertinent developments.

6. Document discovery in the litigation was on a mammoth scale. Class Counsel took a lead role that was instrumental in reviewing documents produced by SCE&G and numerous third parties, and then flagging and commenting on significant documents. This was of enormous assistance to us, as it would have been virtually impossible to do a thorough job of this review on our own given the compressed time frame and the enormous volume of documents.

7. Class Counsel also offered significant assistance with our needed discovery. For example, Class Counsel assisted us with document discovery, which saved not only litigation costs

but also hundreds, if not thousands, of hours of work and allowed us to streamline discovery and focus our case.

8. In addition, Class Counsel spearheaded many depositions after an early meeting in which they identified key witnesses. Class Counsel also provided insight into issues for each witness facing deposition. This occurred through numerous communications with Class Counsel, along with using and relying on Class Counsel's work product and key documents. During fall 2018, Class Counsel and ORS undertook twenty-six depositions to meet the PSC hearing deadlines. Of these depositions, twelve were entered into evidence before the PSC, along with their supporting exhibits.

9. Class Counsel's strategic insight and diligence throughout the discovery process supported ORS's case, which ultimately was adopted by the PSC. This is perhaps best evidenced by the testimony and depositions of Carlette Walker and Kenneth Browne. Counsel for ORS did not attend the first deposition of Carlette Walker because it occurred prior to ORS's intervention in the state court action. In addition, ORS relied on Class Counsel to take the lead in the Kenneth Browne deposition and the second Carlette Walker deposition because of the need for ORS counsel to prepare for the hearing and other depositions. (The second Walker deposition is a good example of the pace and overlapping nature of the proceedings. It occurred the day after the deposition of the former SCE&G CEO, Kevin Marsh, and just two days before the PSC hearing began. Furthermore, the deposition of the former ORS director was scheduled to occur the same day, although it was rescheduled due to illness.) Both Mr. Browne and Ms. Walker became key witnesses for ORS based on the testimony elicited by Class Counsel during their depositions. There is no question that these two witnesses offered critical testimony for ORS's case, which was available because of Class Counsel's efforts.

10. In total, we presented or cross-examined forty-one witnesses for fifteen days in the PSC hearings. Our ability to be extensively prepared, as well as our ultimate success, was tied to Class Counsel's willingness to engage with and assist our efforts in advocating for the public interest and on behalf of SCE&G customers.

Wallace K. Lightsey

Sworn to me this 5th
day of April, 2019

Notary Public for South Carolina

My Commission Expires: 12/10/2023

EXHIBIT 10

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	CASE NO.: 2017-CP-25-335
)	
Richard Lightsey, LeBrian Cleckley,)	
Phillip Cooper, et al., on behalf of)	
themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	**AFFIDAVIT OF**
)	
South Carolina Electric & Gas)	**NANETTE S. EDWARDS**
Company, a Wholly Owned)	
Subsidiary of SCANA, SCANA)	
Corporation, and the State of)	
South Carolina,)	
)	
Defendants,)	
)	
South Carolina Office of Regulatory)	
Staff,)	
)	
Intervenor.)	
)	

1. I am the Executive Director of the South Carolina Office of Regulatory Staff (ORS). I have served in that position since July 2018 and served in an interim capacity prior to that. As the Executive Director, I am responsible for overseeing all operations of the ORS. The ORS represents the public interest and ratepayers in utility regulation. Since enactment of Act 175 in 2004, the ORS has sole responsibility for the inspection, auditing, and examination of public utilities operating in South Carolina. I make this affidavit based on my own personal observations and knowledge.

2. In late 2017, the ORS faced an unprecedented situation with its mission of representing the public interest and ratepayers before the South Carolina Public Service Commission (PSC). SCE&G had abandoned the new nuclear development construction at the V.C. Summer site in Jenkinsville, South Carolina ("the Project"), and filed a petition with the PSC under the Base Load Review Act (BLRA) to recover approximately $5 billion in capital costs incurred in attempting to construct the Project. The petition, along with two other petitions filed relating to revised rates being collected from ratepayers for the Project, created the largest and most complex utility ratemaking docket in South Carolina history. The ORS faced several complex factual and legal issues, based on the intricate regulatory interplay among the ORS, SCE&G, and the PSC spanning over a decade, along with unique nuances of the BLRA on utility regulation and rates and also the Project's complex and protracted

construction schedules and milestones. At the same time, the ORS continued to face regulatory actions and appeals in all its other cases and regulatory oversight responsibilities.

3. SCE&G's petition also requested approval of a merger with Dominion Energy which required the ORS to provide a recommendation on the merger and merger conditions. Furthermore, the ORS had filed a competing petition with the PSC that sought termination and recovery of the revised rates that SCE&G had received over the life of the Project, based on an opinion as to the constitutionality of the BLRA provided by the South Carolina Attorney General. In addition, state law mandated that the hearing on the SCE&G Petition occur within a matter of months, exceeding the ORS ability, based on its limited assets, to handle these unprecedented challenges.

4. The SCE&G petition to recover as much as an additional $5 billion amortized over 20-60 years also raised procedural challenges that were unprecedented in proceedings before the PSC. There were numerous key witnesses who lived outside the state of South Carolina, and the ORS needed the ability to issue subpoenas to acquire evidence (documents and depositions) from these key witnesses. For that reason, ORS realized that it needed to intervene in this action pending in circuit court on behalf of the class of ratepayers who had been paying the revised rates for the Project.

5. Based on these facts and circumstances, the ORS determined that it did not have sufficient internal legal resources to handle the Project litigation without hiring outside counsel. Prior to this need, the ORS usually hired outside counsel only in extremely limited circumstances, and subject to the approval of the South Carolina State Attorney General's office—for example, in areas of law requiring specialized knowledge such as bankruptcy counsel or when local, out-of-state counsel was needed. On March 22, 2018, ORS retained the firm of Wyche, PA to serve as litigation counsel in the PSC hearings on the Project and to intervene in this class action.

6. The ORS incurred legal fees for this outside counsel representation in the amount of $826,467.50. Of that amount, ORS has paid outside counsel $600,000.00 to date. This representation and the amount incurred were necessary and reasonable. Because of outside counsel, the ORS was successful in its discovery, development, and presentation of the evidence and legal issues in the public interest for future rate relief for the class of ratepayers and in this class action for the direct recovery. Outside counsel was also a vital component in the ORS's cooperative work with the plaintiff class counsel to implement the rate relief from the PSC proceedings to provide maximum economic benefit to SCE&G customers.

Nanette S. Edwards

Nanette S. Edwards

Sworn to me this 17th
day of April, 2019

Victoria L Watts
Notary Public for South Carolina

My Commission Expires: 10/16/23

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-cv-60341-WPD

WILLIAM B. NEWTON and NOREEN ALLISON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DUKE ENERGY FLORIDA, LLC, a Florida limited liability company and FLORIDA POWER & LIGHT COMPANY, a Florida profit corporation,

Defendants.

_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

THIS CAUSE comes before the Court on Defendant Florida Power and Light Company's Motion to Dismiss Plaintiffs' Complaint [DE 23] and Defendant Duke Energy Florida, LLC's Motion to Dismiss [DE 24], both filed herein on May 5, 2016 (collectively, the "Motions"). The Court has carefully considered the Motions, Plaintiffs' Responses [DEs 31, 32], Defendants' Replies [DEs 37, 38], and is otherwise fully advised in the premises.

I. Background

This action was filed on February 22, 2016, by Lead Plaintiffs WILLIAM B. NEWTON AND NOREEN ALLISON ("Plaintiffs") against Defendants: (1) DUKE ENERGY FLORIDA, LLC. ("Duke"); and (2) FLORIDA POWER & LIGHT COMPANY ("FPL") (collectively, "Defendants"). There are two pending Motions to Dismiss [DEs 23, 24]—filed by FPL [DE 23], and Duke [DE 24]. The hearing for oral argument on both Motions [DEs 23, 24] was held on September 16, 2016.

The operative complaint is the Class Action Complaint [DE 1] (the "CAC"). Plaintiffs challenge the constitutionality of a Florida law, the Florida Renewable Energy Technologies and Energy Efficiency Act, 2006 Fla. Laws ch. 230.[1] [¶¶ 1–3].

Duke and FPL are the largest utility companies in Florida; they have a monopoly over their respective territories. *Id.* According to Plaintiffs, the Act requires customers of FPL and Duke to pay into a system, the "Nuclear Cost Recovery System ("NCRS"), to fund nuclear projects; if the nuclear projects are abandoned, the utilities keep the money and may collect more. *Id.* Customers have paid $2 billion on their electric bills to fund these nuclear projects, most of which will never generate any electricity or any other benefit for customers.[2] *Id.* The Act allows Florida utilities to pass costs related to nuclear development onto customers. [¶ 7]. Since November 12, 2008, customers have been paying to fund various nuclear power plant projects launched by Defendants; Duke abandoned all of its nuclear projects in 2013[3], and FPL's expansion of an existing plant is "bogged down in red tape." *Id.*

Under the NCRS, the Florida Public Service Commission ("FPSC"), a state agency charged with regulating electric utilities, issues a Determination of Need allowing a utility company to pass the cost of nuclear power plant construction onto its customers. [¶¶ 15–20]. The Act allows utility companies to collect these costs *before* the plants are completed, contrary to the ordinary practice where utilities add pre-construction and construction costs to their rate base *after* the new plant is completed. *Id.*

---

[1] Fla Stat. §§ 366.93, 403.519(4)

[2] The costs included site selection and acquisition, licensing, pre-construction, construction, and carrying costs. [¶ 20].

[3] Duke purchased land for a nuclear power plant on November 12, 2008 at a cost of $55 million; Duke announced it was abandoning the plant on August 1, 2013; under the Nuclear Cost Recovery System, Duke can keep all the costs collected from customers and can collect additional costs that the FPSC determines as "prudent." [¶¶22–23].

The CAC contains four counts challenging the constitutionality of NCRS: (1) NCRS violates the dormant Commerce Clause[4]; (2) NCRS is preempted (under the Supremacy Clause) by the Atomic Energy Act of 1954 ("AEA"); (3) NCRS is preempted by the Energy Policy Act of 2005 ("EPACT"); and (iv) a derivative claim for unjust enrichment. [¶ 4]. Plaintiffs seek declaratory relief, injunctive relief, restitution, and damages. Through the instant Motions [DEs 23, 24], Defendants, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, seek dismissal of all counts.

II. Standard of Review

To adequately plead a claim for relief, Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating *Conley*, 355 U.S. at 41). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556). The allegations of the claim must be taken as true and must be read to include any theory on which the plaintiff may recover. *See Linder v. Portocarrero*, 963 F. 2d 332, 334-36 (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F. 2d 43 (5th Cir. 1967)).

However, the court need not take allegations as true if they are merely "threadbare

[4] Plaintiffs allege that the Nuclear Cost Recovery System violates the dormant Commerce Clause by discriminating against out-of-state energy providers and by discriminating against in-state producers of non-nuclear energy. The Act favors nuclear providers by providing financial immunity to private utilities that seek to build nuclear power plants. [¶ 5].

recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 129 S. Ct. at 1949. In sum, "a district court weighing a motion to dismiss asks 'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" *Twombly*, 550 U.S. at n. 8 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds, Davis v. Scherer*, 468 U.S. 183 (1984)).

III. Discussion

As a preliminary matter, the CAC is subject to dismissal on two separate grounds, which standing alone, would be sufficient to dismiss the entire CAC. First, the CAC is subject to dismissal for lack of state action. Second, the CAC is subject to dismissal for want of a private right of action. Furthermore—the individual counts of the complaint—Plaintiffs' dormant Commerce Clause claim, preemption claims, and claim for unjust enrichment, are subject to dismissal on four additional grounds. First, Plaintiffs lack standing to bring a claim under the dormant Commerce Clause. Second, NCRS is not preempted by AEA. Third, NCRS is not preempted by EPACT. Finally, the Court declines supplemental jurisdiction over the derivative state-law unjust enrichment claim.

A. The CAC is subject to dismissal on two separate and independent grounds.

The CAC is subject to dismissal on two separate grounds, either of which, standing alone, would be sufficient to dismiss the CAC. First, the CAC is subject to dismissal for lack of state action. Second, the CAC is subject to dismissal for want of a private right of action.

1. The CAC is subject to dismissal for lack of state action.

Plaintiffs cannot challenge the constitutionality of a state statute by bringing suit against a private actor; such a law suit can only be brought against state actors. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Generally, constitutional challenges to state laws require

state action. *See id.*; *Abner v. Mobile Infirmary Hosp.*, 149 Fed. App'x 857, 859 (11th Cir. 2005) ("[T]he Constitution only protects against injuries caused by state actors."). Since Defendants are private entities and there is no state action, Duke seeks dismissal of Plaintiffs' constitutional claims against them. The Court notes that regulation of Defendants by the FPSC does not convert their business into state action. *See Carlin Commc'n v. S. Bell Tel. & Tell. Co.*, 802 F.2d 1352, 1361 (11th Cir. 1986) ("[T]he mere approval by the PSC of a business practice of a regulated utility does not transmute a practice initiated by the utility into state action."); *accord Blankenship v. Gulf Power Co.*, 551 Fed. App'x 468, 471 (11th Cir. 2013).

Plaintiffs argue that Defendants are the proper parties in this action. Plaintiffs state that under Florida law, the State need not be joined to the action in order to pursue a constitutional challenge to state statutes. Plaintiffs characterize this issue as merely procedural—a failure to join the State Attorney General as a necessary party. Duke asserts that the substance of the relief requested by Plaintiffs—the striking down of a State statute, or a declaration to that effect—cannot be ordered against a private entity.

Since Plaintiffs' constitutional claims are not asserted against a state actor, the constitutional claims are dismissed for failure to state a claim. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) ("[S]tate action requires both an alleged constitutional deprivation caused by the State . . . , and that the party charged with the deprivation must be a person who may fairly be said to be a state actor."). Since the unjust enrichment claim is derivative of the constitutional claims, it is also dismissed. The lack of state action provides independent grounds for dismissing the CAC; however, the Court has addressed a second ground for dismissal of the CAC—lack of a private right of action.

2. The CAC is subject to dismissal for want of a private right of action.

In order for the Court to declare a state statute unconstitutional, a plaintiff must have a right to sue for that relief. *See Armstrong v. Exceptional Child Ctr.*, 135 S. Ct. 1378, 1383 (2015). The "question whether a plaintiff states a claim for relief 'goes to the merits.'" *Bond v. United States*, 564 U.S. 211, 219 (2011). Plaintiff must assert more than having a right that was violated; plaintiff must have a legally sufficient vehicle (a right of action, a cause of action, or a claim for relief) through which to pursue that right in court. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002). A plaintiff may pursue affirmative preemption claims and challenges to the Commerce Clause only when Congress provides a right of action. *See Armstrong*, 135 S. Ct. at 1384; *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("[P]rivate rights of action to enforce federal law must be created by Congress.").

Regarding the preemption claims, there is no private right of action under the Supremacy Clause, the AEA, or EPACT. Similarly, there is no private right of action under the Commerce Clause. Plaintiffs argue that The Declaratory Judgment Act ("DJA") provides a ground for the Court to hear the preemption claims and the dormant Commerce Clause claim, regardless of the absence of private right of action. The Court finds that the DJA cannot substitute for a private right of action. Accordingly, the preemption claims and dormant Commerce Clause claim must be dismissed.

i. Preemption Claims: there is no private right of action under the Supremacy Clause, the AEA, or EPACT.

The Supremacy Clause is a "rule of decision" that "certainly does not create a cause of action." *Armstrong*, 135 S. Ct. at 1383. Therefore, the only source for a preemption claim is in the statutes alleged to be preempted. *See id.* at 1385–87. Congress creates a private right of

action only when it uses "rights-creating language" in the statute. *Sandoval*, 532 U.S. at 288. AEA and EPACT do not contain such language, so they are not privately enforceable. In *Liesen v. La. Power & Light Co*, the Court found no private right of action under AEA. 636 F.2d 94, 95 (5th Cir. Feb. 2, 1981).[5] Only judicial enforcement by the Attorney General is permitted. Atomic Energy Act of 1954, 42 U.S.C. § 2271(c) (2012). EPACT is also not privately enforceable according to *Blankenship v. Gulf Power Co.,* No. 12-0266, 2014 WL 83889, at *3 (N.D. Fla. Jan 9, 2014). Since the AEA and EPACT do not contain a private right of action, and the Supremacy Clause does not provide a private right of action, Plaintiffs' preemption claims must be dismissed.

ii. Dormant Commerce Clause claim: there is no private right of action under the Commerce Clause.

Regarding the dormant Commerce Clause claim, the Commerce Clause also does not independently convey a private right of action. Private litigants can only bring Commerce Clause claims under 42 U.S.C. § 1983 because Congress expressly created a private right of action in that statute. *Pharm. Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 683 (2003) (citing *Gonzaga Univ.*, 536 U.S. at 283) ("When Congress wishes to allow private parties to sue to enforce federal law, it must clearly express this intent. Under this Court's precedents, private parties may employ 42 U.S.C. § 1983 or an implied private right of action only if they demonstrate an 'unambiguously conferred right.'"). However, Plaintiffs cannot assert a Section 1983 claim for alleged Commerce Clause violations because the Defendants are not state actors.

iii. The DJA is not a substitute for a private right of action.

In response, Plaintiffs claim that the DJA is the source of their claims. Plaintiffs argue that Duke mischaracterizes the CAC by claiming that it seeks to enforce the Commerce Clause,

[5] Fifth Circuit decisions issued prior to October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

AEA, and EPACT against Defendants. Instead, they construe their claims as seeking: declaratory judgment that NCRS is invalid under the dormant Commerce Clause or the Supremacy Clause; injunction of the unconstitutional statute; and recovery of fees wrongfully collected under an unconstitutional law. Plaintiffs aver that the DJA creates a federal cause of action permitting "any court of the United States, upon the filing of an appropriate pleading, . . . [to] declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." The declaratory Judgment Act, 28 U.S.C. § 2201(a) (2012).

It is now well settled that "The [DJA] is neither an extension of federal jurisdiction nor an end-run around constitutionally prohibited advisory opinions." *Bacardi USA, Inc. v. Young's Mkt. Co.*, No. 16-CV-20070-PAS, 2016 WL 3087060, at *4–5 (S.D. Fla. May 31, 2016). Declaratory relief presupposes the availability of a judicially remediable right. *Schilling v. Rogers*, 363 U.S. 666, 677 (1960); *accord Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 902 (6th Cir. 2014) ("The point of the [DJA] is to create a remedy for a preexisting right enforceable in federal court."); *Alberto San, Inc. v. Consejo De Titulares Del Condominio San Alberto*, 522 F.3d 1, 5 (1st Cir. 2008). In addition, relief under DJA is discretionary. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 136-37. This "substantial" discretion is exercised in light of the DJA's purpose as well as equitable, prudential, and policy grounds. *Id.*; *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286-88 (1995).

AEA, EPACT, and the Supremacy Clause do not provide a private right of action, and without a preexisting right enforceable in this Court, Plaintiffs' claims cannot be brought under the DJA. Accordingly, the Court dismisses Plaintiffs' constitutional claims for want of a private right of action, finding that the DJA does not provide Plaintiffs with an avenue for relief under the applicable statutes and constitutional provisions.

B. Additional grounds for dismissal of individual counts

Lack of state action and lack of a private right of action are two independently sufficient grounds for dismissal of the CAC. Additionally, the Court finds dismissal of the individual counts appropriate for the following reasons: first, Plaintiffs lack standing to bring a claim under the dormant Commerce Clause; second, NCRS is not preempted by AEA; third, NCRS is not preempted by EPACT; and finally, the Court declines supplemental jurisdiction over the derivative state-law unjust enrichment claim.

1. Plaintiffs lack standing to bring a claim under the dormant Commerce Clause.

Whether a plaintiff has standing "involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise." *Bennett,* 520 U.S. at 162 (quoting *Warth v. Seldin,* 422 U.S. 490, 498 (1975)). Prudential standing involves "judicially self-imposed limits on the exercise of federal jurisdiction," *Allen v. Wright*, 468 U.S. 737, 751 (1984), that are "founded in concern about the proper—and properly limited—role of the courts in a democratic society," *Warth*, 422 U.S., at 498.

Prudential standing requires that "[i] the plaintiff asserts his own rights and not the rights of others, [ii] that federal courts not adjudicate generalized grievances, and [iii] that the plaintiff's complaint falls within the zone of interests protected by the [constitutional provision] in question." *Pace v. Peters*, 524 F. App'x 532, 536 (11th Cir. 2013) (citing *Harris v. Evans*, 20 F.3d 1118, 1121 (11th Cir.1994)).

In *Individuals for Responsible Gov't, Inc v. Washoe Cnty.*, an ordinance required state customers to subscribe and pay for waste-removal services from a company that would pick up their trash and take it to a facility within the state. 110 F.2d 699, 702 (9th Cir. 1997). The plaintiffs did not want to subscribe, and they challenged the ordinance on dormant Commerce

Clause grounds; they argued that the ordinance "interfere[d] with interstate commerce by preventing them from utilizing dump sites outside the State." *Id.* Paying for unwanted services was sufficient to satisfy Article III standing, *id.*, but not prudential standing because their injury was "not even marginally related to the purposes underlying the Commerce Clause." *Id.* at 703. Even if the unasked for service and fees were used to haul trash to a neighboring state (removing the barrier to interstate commerce), the plaintiffs' injury would remain the same. *Id.*

Similarly, if NCRS offered funding to out-of-state energy providers, that would remove the barrier to interstate commerce alleged by Plaintiffs, but like in *Washoe County*, it would not change the injury—Plaintiffs would still be paying higher fees for retail electricity service. Therefore, the zone of interests prong of prudential standing is not satisfied.

Additionally, the CAC can be characterized as seeking to vindicate the rights of non-party, out-of-state energy providers, and Plaintiffs lack prudential standing for that interest. *See L.A.M Recovery*, 184 Fed. App'x at 88 (party attempting "to vindicate th[e] right on behalf of out-of-state" competitors lacks prudential standing). Plaintiffs are not competitors of Duke or FPL in the retail electricity market; they are consumers of retail electric. Their alleged injury is financial—paying higher rates for electricity—not commercial or competitive.

Duke concedes that the injury alleged by Plaintiffs may be sufficient to satisfy Article III's standing requirements, but contends that it is not enough for prudential standing to pursue a dormant Commerce Clause claim. The Court agrees. The Plaintiffs' dormant Commerce Clause claim is dismissed because there is no state action or private right of action; additionally, Plaintiffs lack prudential standing to bring a claim under the dormant Commerce Clause.

2. NCRS is not preempted by AEA.

The AEA does not preempt all State regulation in the field of nuclear energy products. Instead, the AEA preempts state regulations in the area of nuclear power plant safety. The text of the AEA specifies: "Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes *other than protection against radiation hazards*." 42 U.S.C. § 2021(k) (2012) (emphasis added). The states are empowered to determine the need for power and regulate the financing of construction of nuclear power plants since that is not related to safety. Therefore, NCRS is not preempted by AEA.

3. EPACT does not preempt NCRS.

In order to successfully challenge the NCRS on preemption grounds, plaintiffs must prove that "compliance with both federal and state regulations [is] a physical impossibility or state law [stands] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *PG&E*, 461 U.S. at 204. Plaintiffs argue that EPACT's distinguishing feature, its federal guaranteed loan program, directly conflicts with NCRS. Defendants argue that compliance with both NCRS and EPACT is possible.

Plaintiffs contend that NCRS disrupts the federal government's ability to encourage private sector development of environmentally-friendly alternative energy. They argue that nothing in AEA nor EPACT permits states to subsidize the construction cost of nuclear power plants. The goal of the federal legislation, Plaintiffs argue, is to encourage innovative, carbon-neutral nuclear technology and encourage commercial development *without subsidizing construction* of nuclear power plants; they find this objective to be obstructed, and directly conflicted, by the NCRS.

The Court relies on the presumption against preemption. "[I]n all preemption cases, and particularly in those in which Congress has legislated in a field which the States have

traditionally occupied, courts assum[e] that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (citation omitted). Nothing in the text of EPACT displays an intent by Congress to preempt the state's ability to regulate the areas covered by the NCRS. Therefore, NCRS is not preempted by EPACT.

4. The Court declines supplemental jurisdiction over the derivative state-law unjust enrichment claim.

Having dismissed the federal law claims, the Court declines the exercise of supplemental jurisdiction over the related state law claims. Once all federal claims have been dismissed, district courts may decline to exercise supplemental jurisdiction over remaining state law claims. 28 U.S.C. § 1367(c)(3) (2012); *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1089 (11th Cir.2004) ("encourag[ing] district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial."). In addition, the state law claim for unjust enrichment is derivative of the dismissed claims alleging that NCRS is invalid; accordingly, the Court dismisses the claim for unjust enrichment.

I. CONCLUSION

Based upon the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. The Motions [DEs 23, 24] are **GRANTED**;
2. The Class Action Complaint [DE 1] is hereby **DISMISSED WITH PREJUDICE**;
3. The Clerk shall **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 21st day of September, 2016.

WILLIAM P. DIMITROULEAS
United States District Judge

cc: Counsel of record

EXHIBIT 12

COUNTY OF HAMPTON)
)
STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

Anderson Memorial Hospital, on behalf of itself and all those similarly situated,

Plaintiff,

v.

W. R. Grace & Co., et al.

Defendants.

Case No. 92-CP-25-279

Order

This matter is before the Court on Class Counsel's Application for reimbursement of expenses and the payment of Attorney's Fees. This matter was heard on December 9, 2008 at the Beaufort County Courthouse. Appearing on behalf of the class were Daniel A. Speights, C. Alan Runyan and Bud Fairey.

This case commenced almost sixteen years ago as a class action in the Hampton County Court of Common Pleas. After litigation in the South Carolina Courts and two federal bankruptcy courts the parties came to a resolution of these cases as to defendants United States Gypsum Co. ("U. S. Gypsum") and Federal-Mogul Corporation ("Mogul" formally known as T&N, p.l.c.). These two settlements were reached in the federal bankruptcy court where they were approved as part of the respective approved plans of reorganization of U. S. Gypsum and Mogul. In approving these settlements, the presiding bankruptcy judge lifted the automatic stay of 11 U.S.C. §362 so that this Court could consider whether to approve these two class settlements under Rule 23, SCRCP, and if so approved, to preside over the administration of the settlements.

Pursuant to this Court's prior Order of August 19, 2008 granting preliminary approval of the proposed settlements with U. S. Gypsum and Mogul, Class Counsel has given notice to the

#1 JCH

proposed class that they are seeking Attorney's Fees and reimbursement of the costs advanced in this litigation. In the Court's Order, Class Counsel was required to provide notice to the Class by direct mail to three-hundred and forty one (341) known class members and by publication in eight South Carolina newspapers of highest circulation to the remaining unknown class members, all of whom are South Carolina residents. The direct mail notice and the publication notice both specifically advised class members that upon final approval of the settlements, Class Counsel would seek reimbursement of approximately one million ($1,000,000.00) in expenses incurred in litigating this case and seek an award of one-third of the gross settlement fund in attorneys fees. Further, this Court's Order required Class Counsel to file its petition for fees and expenses well in advance of the final approval hearing. Both the direct mail and publication notices advised absent class members of these filings and explained to them that they could obtain a copy of Class Counsel's petition from the Hampton County Clerk of Court or Class Counsel. This Court's Order also advised absent class members of their rights to appear and object and advised them of the necessity to file any objections to the fee and expenses petition in writing in advance of the final approval hearing.

According to the affidavits of compliance with the notice provisions of this Court's Order, Class Counsel completed the direct mail notice by August 20, 2008 and began the publication notice on August 22, 2008. The final approval hearing was held on October 1, 2008 at the Moss Judicial Center in York, South Carolina. At that hearing, the Court noted that no written objections had been filed by absent class members and that no class members appeared at the hearing. In the ensuing two months between the final approval hearing and the fee hearing, there have been no objections filed to Class Counsel's request.

This Court is very familiar with this case, having been the assigned judge for this case from 1996 through 2001 when the remaining defendants filed bankruptcy petitions, and again in 2008 when the case was returned from the bankruptcy court. This case has been pending for almost sixteen years in this Court and the bankruptcy courts. It has had a complex procedural history which included its removal to federal court, remand to Hampton County, venue motions, jurisdictional litigation, substantive discovery, class certification and several attempted appeals or petitions to the South Carolina Appellate Courts.

The work required of Class Counsel has included sending or responding to well over 1000 written discovery requests, and attending numerous document productions in multiple cities. Just with respect to the class certification, the parties exchanged three rounds of briefs, multiple discovery motions in two states and conducted a two day evidentiary hearing primarily addressing personal ethics attack against Class Counsel which proved to be wholly unfounded. Indeed, this has been a very difficult case since its inception.

In *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), the Supreme Court recognized that the percentage of the recovery method was the accepted way to analyze fees to be paid from a common fund. The court noted: "[W]hen awarding fees to be paid from a common fund, courts often use the common fund itself as a measure of the litigation's 'success.' These courts consequently base an award of attorneys' fees on a percentage of the common fund created, known as the "percentage of recovery" approach." 376 S.C. at 453, 658 S.E.2d at 330; citing, *Edmonds v. United States*, 658 F.Supp. 1126, 1144 (D.S.C. 1987).

Under South Carolina law, a fee award calls for the "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4)

JC 1143

contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id.* Consideration of all six factors is necessary but none controls. *Id.*

In support of its fee request, Class Counsel has submitted the affidavit and testimony of an expert witness, Professor John Freeman[1], as well as the presentation of Class Counsel Daniel A. Speights, affidavits and other materials in support of the hours spent on the case and the unreimbursed expenses incurred. The Court must evaluate this evidence against the factors identified in *Jackson*, to determine if the requested fee is reasonable under the circumstances.

(1) The Nature, Extent, and Difficulty of the Case

This case has been tough and hard fought from the outset. As demonstrated by the expert testimony of Professor John Freeman and the submissions of Class Counsel, the amount of documentation generated in the case is enormous. As Professor Freeman's affidavit and testimony reflect, the file on this case would measure well over 900 linear feet from end to end. This represents a significant amount of work on a very difficult case.

Additionally, class actions by their nature increase the complexity of a case significantly. This case is no exception. Because of the stakes involved and the number of defendants, there were numerous novel and difficult legal and factual issues that required the attention of Class Counsel. The issues that confronted the parties and this Court were complex and fraught with conflicting medical, scientific, and technical evidence. Each side could confidently cite legal opinions and precedents that supported its view of the case. During the pendency of this case, this Court was confronted with issues such as a particularly contentious class certification

[1] The Court finds Professor Freeman to be qualified to testify as an expert witness regarding Attorney's Fee applications in class action litigation. See, Rules 702, 703 SCRE.

JCH #4

proceeding, removal/remand, venue, complex discovery issues, complex jurisdictional challenges and establishing facts and assembling proof dating back decades. Adding to the difficulty of the case was a vehement personal assault on Class Counsel's competence and integrity led by W. R. Grace, a defendant who is a party to this lawsuit but not to this settlement. This attack was resoundingly rejected after careful review by this Court. Millions of dollars were spent by the parties in this case and millions more would have been expended but for the settlements reached with these defendants. *In re: Federal Mogul Global Inc.*, 2007 WL 4180545 (Bkrtcy.D.Del. 2007) p. 36 (finding that Debtors would likely incur litigation costs of $5 million to $10 million litigating the Anderson claims before the bankruptcy court).

(2) The Time Necessarily Devoted to the Case

As Professor Freeman aptly noted in his affidavit, this is perhaps one of the oldest cases still active on South Carolina's civil dockets. Over the sixteen years of the pendency of this case, Class Counsel has expended in excess of 12,000 attorney hours representing the class just against these settling defendants. Professor Freeman averred he was confident there was no padding of time or unnecessary duplication of effort. Moreover, as this Court witnessed firsthand, the expenditure of so many hours by Class Counsel was necessary because of the vehement and substantial defense put on by the settling defendants. As Professor Freeman opined, "[b]y dogged persistence and dedication, class counsel demonstrated the ability to protect class members and secure a substantial award."

(3) The Professional Standing of Counsel

Class Counsel has similarly made a compelling showing that this factor weighs strongly in its favor. As Professor Freeman testified, he has personally worked with Dan Speights, Alan Runyan and Bud Fairey and their firm in various ways over the years. Each of these counsel

have been involved with this litigation since its inception. These Class Counsel have enviable reputations and have been at the forefront for many years in the efforts to vindicate clients' rights in court in complex cases, especially asbestos property damage cases. Indeed, Dan Speights was the first lawyer in America to successfully try an asbestos property damage case, and has personally been at the forefront of this litigation for over twenty-seven years. Based upon his own experience and observation as well has his careful review of this case in particular, Professor Freeman avers that "Plaintiffs have had the benefit of truly outstanding advocacy." This Court agrees.

(4) Contingency of Compensation

Class Counsel have advanced seven hundred and three thousand, seven hundred and thirty-seven and 88/100 ($703,737.88) dollars in costs in this litigation and spent over 12,000 attorney hours just with respect to these two settling defendants, without any guarantee of reimbursement except in the event of a successful recovery on behalf of the class. The money and value of time they put at risk was substantial. As Professor Freeman aptly noted, there are "very few law firms in South Carolina [that] have the ability to front costs running into the millions for years on end as Class Counsel have." This action attests to the commitment of Class Counsel to their clients and strongly weighs in favor of this factor.

(5) Beneficial Results Obtained

The gross benefit achieved by Class Counsel in this case, totals $57 million. This represents one of the largest common fund recoveries in South Carolina history. This result was obtained despite worthy and able opposition by defense lawyers who are known for their

JC# #6

excellence. Moreover, when compared to the results reached in similar class actions, it is clear that this settlement represents a real and substantial benefit to the class.[2]

(6) Customary Legal Fees for Similar Services

The South Carolina Supreme Court determined in *Global Protection Corp. v. Halbersberg* 332 S.C. 149, 503 S.E.2d 483 (1998), the customary fee in South Carolina for complex cases accepted on a contingent-fee basis ranges from one-third to one-half of the gross recovery. Here, Class Counsel has requested one-third of the settlement fund created. This request is well within the range of fees routinely approved by courts in class actions. *See, Maywalt v. Parker & Parsley Petroluem Co.*, 963 F.Supp. 310, 313 (S.D.N.Y 1997) ("Traditionally, federal courts have awarded fees in the 20% to 50% range in class actions"); *In re: Ikon Office Solutions, Inc. Sec. Litig.*m 194 F.R.D. 166, 194 (E.D.Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent of the settlement fund to be fair and reasonable."); *In re: Smith-Kline Beecham Corp. Sec. Litig.*, 751 F.Supp. 525, 533 (E.D.Pa. 1990) ("Courts have allowed attorney compensation ranging from 19 to 45% of the settlement fund created."). It is on the low end of the range acknowledged by the South Carolina Supreme Court in *Halbersberg*. Moreover, when the effective hourly rate of the requested fee award in this case is compared to the fee recently approved by Judge Blatt in *Central Wesleyan College v. W. R. Grace & Co., et al.*, for the U. S. Gypsum portion of that settlement, it is clear that the effective hourly compensation sought, by

[2] As Class Counsel demonstrated at the final approval hearing for this settlement on October 1, 2008, this settlement with U. S. Gypsum and Mogul represents a greater settlement amount than was obtained in other asbestos property damage class action settlements from the same defendants. Indeed, this case generated 155% of the recovery obtained in *Central Wesleyan v. W. R. Grace & Co., et al.*, 2:87-1860-8 (D.S.C.) (nationwide colleges and universities class), 250% of the settlement obtained in *In re: Asbestos Schools Litigation*, 83-0268 (E.D.Pa.) (national primary and secondary school class) and 1500% of the settlement obtained in *Prince George Center v. United States Gypsum Co.*, No. 5388 (Com. Pls., Philadelphia County, PA) from these same two defendants.

class counsel here, a one-third contingency fee, is significantly less than the fee recently approved by Judge Blatt.

Conclusion

For the reasons stated herein, as well as the full record in this case, the Court finds that the award of attorney's fees and the reimbursement of costs is appropriate and is fully supported by the record. The Court, therefore, enters the following orders:

1. Class Counsel shall be reimbursed for the costs advanced to date in the amount of Seven hundred and three thousand, seven hundred and thirty-seven and 88/100 ($703,737.88) dollars;

2. Class Counsel shall be awarded attorneys fees in the amount of one-third of the total recovery from the settlements with U. S. Gypsum and Mogul for work performed to the date of this Order;

3. Class Counsel is authorized to withdraw from the Settlement Funds held in Trust the amounts stated in this Order for attorney's fees and unreimbursed costs which are approved by this Order; and

4. Nothing in this Order shall prohibit Class Counsel from submitting for consideration by this Court any supplemental requests for reimbursement of any costs advanced after the date of this Order which are incurred with respect to this hearing or the administration of this case and/or the claims of class members.

IT IS SO ORDERED.

John C Hayes

The Honorable John C. Hayes, III
Circuit Court Judge

#8

This 10th day of December, 2008
Beaufort, South Carolina

EXHIBIT 13

Tel-Con with Ty Troutman (Bechtel, Nuclear GM, Craig Albert direct report)
Feb 4, 2016, 11:30am

- Oct 22, 2015 … Bechtel presents high-level assessment finding to Owners
- Mid Nov 2015 … Bechtel issues report to George.
- Over next couple of weeks … George sends Bechtel a heavily redacted mark-up … requesting schedule and other information be removed
    - Bechtel / George go back and forth for while … no real progress made
    - At some point, in lieu of honoring George's requested redactions … Bechtel forwards an alternative report
    - George rejects the alternative report.
- Around 2nd week Dec … Ty Troutman calls Steve Byrne … for a "what gives" call
    - Ty's message … George's requested redactions defeat the purpose of the assessment & report
    - Byrne reveals his feelings are hurt … Bechtel was too rough on SCE&Gs "EPC management skills"
        - MRC conclusion: Byrne had read report … or gotten a "Wenick tilted" download … Ty said Byrne knew a lot about the content of the report.
    - At conclusion of the Ty/ Byrne call … it was decided that the Oct 22 presentation would serve as final report
    - Bechtel … issues final invoice for work (which was partially paid at some point ??)
- Around Jan 15th … George notifies Bechtel that … schedule piece must be removed and words negative on SCE&Gs "EPC management skills" must be softened.
    - Ty Troutman / Craig Albert … do not want to pull schedule piece … but agree to separate out into a stand-a-lone report and submit 2 reports to George … knowing George will discard the schedule report.
    - This should be going to George shortly.