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

This matter is before the Court pursuant to Rule 23(c) of the South Carolina Rules of Civil Procedure upon Class Counsel's Motion for Final Approval of Class Action Settlement ("Final Approval Motion") and Application for Reimbursement of Expenses and a Contingency Fee Award ("Fee Petition"). These matters were argued on July 20, 2020. The Court entered its Final Order and Judgment on July 21, 2020. Objector Century Aluminum of South Carolina, Inc. filed a Motion for Reconsideration on July 29, 2020. The Century motion has been resolved by Consent Order granting in part and denying in part the requested relief. For the reasons set in the Consent Order, the Court hereby enters this Amended Final Order and Judgment granting Plaintiffs' Final Approval Motion and Fee Petition.

INTRODUCTION

This settlement arises out of a highly contested and extensively litigated case involving the failed construction of two nuclear reactors at the V.C. Summer site in Jenkinsville, South Carolina ("the Project") by Defendants South Carolina Electric & Gas ("SCE&G") and South Carolina Public Service Authority ("Santee Cooper") (collectively "Defendants").[1] On July 31, 2017, Defendants announced they would stop construction of the Project. Shortly thereafter, Class Counsel filed two lawsuits against Santee Cooper on behalf of a class of Santee Cooper direct and indirect customers ("the Customer Class"): *Cook v. South Carolina Public Service Authority*, Case No. 2017-CP-25-348 (Hampton Cty. Ct. Com. Pl., filed Aug. 22, 2017); and *Kolbe v. South Carolina Public Service Authority*, Case No. 2017-CP-08-2009 (Berkeley Cty. Ct. Com. Pl., filed

[1] Other Defendants in this action include Santee Cooper Directors W. Leighton Lord, III, William A. Finn, Barry Wynn, Merrell W. Floyd, J. Calhoun Land, IV, Stephen H. Mudge, Peggy H. Pinnell, Dan J. Ray, David F. Singleton, and Jack F. Wolfe, Jr; Central Electric Power Cooperative, Inc.; Palmetto Electric Cooperative, Inc.; SCANA Corporation; and SCANA Services, Inc. Unless otherwise stated, reference to "Defendants" means Santee Cooper and SCE&G.

Aug. 23, 2017). The cases were later consolidated and SCE&G and SCANA Corporation were added as parties.[2]

Class Counsel amended their complaint as the case progressed so that a Fifth Amended Complaint was filed on July 25, 2019. The other parties updated their responsive pleadings, and Central Electric asserted cross claims against Santee Cooper and the Director Defendants. Palmetto Electric asserted cross claims against Santee Cooper, the Director Defendants, SCE&G, and SCANA. Santee Cooper asserted cross claims against SCE&G, Central Electric, and Palmetto Electric.

Plaintiffs alleged that after conception of the Project in 2005, and execution of a multi-billion dollar Engineering Procurement and Construction contract ("EPC") with Westinghouse Electric Corporation in 2008, the Project was overrun by inefficiencies and gross mismanagement. *See* Fifth Am. Compl., ¶¶ 19-80. Plaintiffs contended Defendants knew years prior to abandonment that the Project was over-budget and no longer feasible. As set forth in Plaintiffs' Fifth Amended Complaint, despite this knowledge, Defendants continued to collect copious sums of money from members of the Customer Class through advanced financing, which covered the Project's debt, executive salaries, and bonuses. *Id*.

After more than two and a half years of litigation, and concluding a two-day mediation, during the early morning hours of February 20, 2020, the parties reached a preliminary settlement, only two months before trial was scheduled to begin. In reaching that critical juncture, Class Counsel withstood numerous challenges and cleared many procedural hurdles, including:

1. Multiple motions to dismiss;

[2] On March 23, 2018, Class Counsel consolidated *Kolbe* into *Cook* by filing a Fourth Amended Complaint in *Cook*.

2. Multiple motions to compel arbitration;
3. A petition in the original jurisdiction of the Supreme Court of South Carolina and a corresponding motion to stay the case;
4. Class Counsel's motion for class certification;
5. Santee Cooper's motion for declaratory relief and to expedite the hearing;
6. Removal to the district court for the District of South Carolina;
7. SCE&G's appeal to the Fourth Circuit of the district court's order remanding the case to the South Carolina circuit court and a corresponding motion to stay the case; and
8. Motions to decertify the Class and to exclude future damages.

In addition to the extensive motions and appellate practice, Class Counsel also engaged in immense discovery, including:

1. Over forty depositions of fact, corporate, and expert witnesses;
2. Extensive review of over sixty batches of documents totaling more than 2.5 million pages;
3. Issuance of third-party subpoenas to independent project contractors, auditors, and consultants;
4. Review of documents produced via subpoena *duces tecum*;
5. Numerous motions to compel production based upon alleged deficient production;
6. Extensive review and conferral regarding the production of numerous privilege logs; and
7. Motions to compel documents identified from the various privilege logs.

Through discovery and extensive document review, Class Counsel developed the argument that Defendants should have ceased the Project's construction by April 2012 because it was no longer reasonable to proceed. Specifically, the EPC provided Defendants a mechanism to stop construction without significant economic ramifications to the utilities, and in turn to the

customers, before signing the "Full Notice to Proceed." *See* Final Approval Motion, p. 5-6. Recognizing the import of this contractual milestone, Class Counsel developed their litigation strategy around this event and targeted discovery around their theory. *Id.*

As part of these efforts, Class Counsel pursued multiple depositions of SCE&G's top executives. Among those executives, Jeff Archie (former Chief Nuclear Officer), Jimmy Addison (former Chief Financial Officer), Steve Byrne (former Chief Operating Officer), and Kevin Marsh (former Chief Executive Officer) invoked their Fifth Amendment right against self-incrimination. In addition, Class Counsel deposed Santee Cooper's current and former officials, whose testimony Class Counsel alleged demonstrated that, far from a passive or uninformed Project partner, Santee Cooper knew very early on that (1) there was no need for additional generation from the two new units, and (2) SCE&G was not equipped to manage construction of the Project. *See* Final Approval Motion, p. 6.

Though Plaintiffs contended their arguments were well supported by the discovery in this case, Defendants vigorously denied liability. Two main defenses emerged. Santee Cooper argued the utility was legally obligated to collect rates from the Customer Class sufficient to cover Project debts, regardless of whether there was any negligence in incurring those debts. Meanwhile, SCE&G contended there was no duty owed to the Customer Class in the absence of a utility or contractual relationship. Additionally, Defendants aggressively challenged venue, subject matter jurisdiction, standing, class certification, and damages.

On February 18, 2020, the parties agreed to mediation for a fourth time—the second with this Court presiding.[3] The parties agreed to a settlement amount of $520 million, representing a

[3] The parties previously agreed to mediation in October 2019 with this Court presiding. Additionally, the parties mediated in February 2019 and June 2019 with the Honorable Joseph F. Anderson, Jr., Senior District Court Judge.

96% recovery of costs incurred by the Customer Class from Full Notice to Proceed through Project abandonment. *See* Aff. of John Alphin, ¶ 4 (Ex. 2 to Fee Petition). In addition, Class Counsel secured a four-year freeze on rate increases by Santee Cooper, the value of which is estimated to total roughly $510 million of additional benefit to the Customer Class.[4] *Id*. at ¶ 7.

On March 17, 2020, this Court heard Class Counsel's unopposed motion for preliminary approval. In finding probable cause existed to approve the settlement, this Court recognized the extraordinary efforts of all counsel, but particularly of Class Counsel, and ordered notice of the proposed settlement be sent to the Class. *See* Order Granting Prelim. Approval of Class Action Settlement, filed March 17, 2020.

On May 29, 2020, Class Counsel filed their Fee Petition seeking a 15% fee on the net present value of the cash components of the settlement[5] (the "Common Benefit Fund") and making no request from the $510 million future benefit. On July 10, 2020, Class Counsel filed their Final Approval Motion.

OVERVIEW OF CLASS NOTICE

The United States Supreme Court has determined that the class representative, through Class Counsel, is responsible for providing class members the best practicable notice. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77 (1974); *see also Krakauer v. Dish Network, LLC*, 925 F.3d 643, 655 (4th Cir. 2019) (observing that notice "is designed to secure judgments binding all class members save those who affirmatively elect to be excluded" (quoting *AmChem Products, Inc. v. Windsor*, 521 U.S. 591, 614-15 (1997))).

[4] It was not lost on this Court that while the parties were engaged in their final mediation, counsel were continuing their forward progress toward trial, preparing for depositions even as their counterparts at the mediation were signing the settlement terms.

[5] *See* Fee Petition, at n. 58.

Based on this requirement, Class Counsel, in conjunction with defense counsel, undertook rigorous efforts to ensure the most widespread notice possible, including:

1. Class Counsel worked with Santee Cooper's and Central Electric's counsel to identify 1,660,263 current and former customers that fit the Class definition.

    a. On May 1, 2020, notice was sent by e-mail to the 641,696 Class members for whom e-mail addresses were available, which resulted in 650,864 notices sent via e-mail due to some Class members having multiple e-mail addresses.

    b. On May 1, 2020, notice was sent by mail to 998,478 Class members.

    c. On May 15, 2020, notice was sent by mail to 17,488 Class members with initially invalid mailing addresses that were able to be corrected.

    d. On May 21, 2020, notice was sent by mail to 125,715 Class members whose e-mailed notice was returned as undeliverable.

    e. As of June 26, 2020, notice has been sent to 131,670 Class members whose addresses were corrected after the initial mailed notice was returned as undeliverable.

2. Notice was published in the *Columbia State*, *Greenville News*, *Charleston Post & Courier*, *Aiken Standard*, *Beaufort Gazette / Bluffton Island Packet Combo*, *Rock Hill Herald*, and *Myrtle Beach Sun News*. These seven papers cover the state, providing extensive supplemental notice to the direct notice detailed above.

3. Class Counsel established a settlement website and toll-free line to provide additional information to the Customer Class. As of June 26, 2020, there had been 18,199 unique visitors to the website and 28,860 website pages presented, and there had been 9,621 calls to the toll-free line representing 35,364 minutes of use.

4. Class Counsel also ran internet banner ads totaling approximately 12.3 million impressions on Google Display Ad Network and Facebook.[6]

[6] *See* Declaration of Cameron R. Azari, Esq., Director of Legal Notice, Hilsoft Notifications, attached as Exhibit 1 to Final Approval Motion.

Notice has been e-mailed or mailed to 1,653,078 unique Class members, with notice to just 15,241 unique Class members currently known to be undeliverable. The individual notice has therefore reached more than 98.6% of the Class members.[7] Individual notice has been supplemented with publication notice and internet banner ads.

As previously approved in the March 17, 2020 Preliminary Approval Order, all forms of the notice that were distributed as described above identified the benefits of the settlement, including the Common Benefit Fund payments that will be made and the Rate Freeze, as defined in the Settlement Agreement. The Rate Freeze was described in the notice as being consistent with the rates projected in the Reform Plan submitted to the South Carolina General Assembly. The notice of the Rate Freeze and additional details about the frozen rates were posted in full on the settlement web site. This robust notice effort satisfies Rule 23(c), SCRCP, and all due process obligations.

FINAL SETTLEMENT APPROVAL

I. INTRODUCTION

Whether to grant final approval of a class action rests in the trial court's discretion, "which should be exercised in light of the general judicial policy favoring settlement." *Robinson v. Carolina First Bank, NA*, Case No. 7:18-cv-02927-JDA, 2019 WL 2591153, *8 (D.S.C. June 21, 2019) (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 280 (S.D.N.Y. 1999).[8] Ultimately, the Court must determine whether the proposed settlement is fair and adequate. *In re Jiffy Lube.*

[7] *Id.* ¶ 35.

[8] Rule 23, SCRCP, is similar to Rule 23, FRCP, and the district courts confront class action issues much more frequently than South Carolina state courts. In these circumstances, the Supreme Court of South Carolina has determined it is appropriate to "look to the construction placed on the Federal Rules of Civil Procedure." *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

Sec. Litig., 927 F.2d 144, 159 (4th Cir. 1991) (outlining factors considered by district courts in the Fourth Circuit).

In analyzing fairness, this Court is tasked with considering "(1) the posture of the case at the time the settlement was proposed, (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of . . . class action litigation." *Id.*

In assessing adequacy, district courts in the Fourth Circuit have considered the following: (1) the relative strength of the Class claims on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement. *In re Jiffy Lube*, 927 F.2d at 159; *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020).

In addition to these matters, this Court is also being asked to approve attorneys' fees and costs, as well as service awards for Class representatives and named Plaintiffs, both of which sound in the discretion of this Court.

II. FAIRNESS

The fairness inquiry "serves to protect against the danger that counsel might compromise a suit for an inadequate amount for the sake of insuring a fee." *In re Mid-Atl. Toyota Antitrust Litig*., 564 F. Supp. 1379, 1383 (D. Md. 1983) (internal citations omitted). Typically, there is a "strong initial presumption that the compromise is fair and reasonable." *S.C. Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991).

At the outset, this Court finds the Fourth Circuit factors are an appropriate standard to assess the fairness of the proposed settlement. With that in mind, the Court now turns to each of those factors.

A. Posture of the Case at the time of Settlement

"Considering the posture of the case at the time of settlement allows the Court to determine whether the case has progressed far enough to dispel any wariness of 'possible collusion amongst the settling parties.'" *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 571 (E.D. Va. 2016) (quoting *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009)). This Court finds that by the time of settlement, the parties had exchanged millions of pages of documents, taken dozens of substantive depositions, and engaged in extensive motions practice, including dispositive motions and motions related to discovery. Class Counsel survived numerous motions to dismiss and successfully defended against Santee Cooper's petition in the original jurisdiction, along with SCE&G's removal to federal district court. If the parties had not reached an agreement, the parties were prepared to proceed to trial.

The multiple adversarial proceedings throughout this litigation and the extensive discovery, in addition to the oversight by this Court and Judge Anderson at mediation, support a finding that the settlement was reached far into the litigation and without any hint of collusion. *Brown*, 318 F.R.D. at 572 (finding "[t]hese adversarial encounters dispel any apprehension of collusion between the parties" (quoting *In re NeuStar, Inc. Sec. Litig.*, No. 1:14-cv-885 (JCC/TRJ), 2015 WL 5674798, at *10 (E.D. Va. Sept. 23, 2015)).

B. Extent of Discovery at Settlement

Generally, consideration of discovery and its status at the time of settlement provides insight into the parties' appreciation of "the full landscape of their case when agreeing to enter into

[a settlement]." *In re The Mills Corp.*, 265 F.R.D. at 254; *see also Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 655, 679 (D. Md. 2013) (noting that where the parties had exchanged initial discovery and fully briefed a motion to dismiss, which the court denied, "all parties had a clear view of the strengths and weaknesses of their respective positions, and sufficient information about the claims and defenses at the time they began exploring the possibility of settlement").

At the time of settlement, the parties had been engaged in thorough and extensive discovery for more than a year and a half. This included more than forty depositions being taken, the exchange of numerous sets of interrogatories and requests for production, and the production and review of more than 60 batches of responsive documents totaling over 2.5 million pages. At the time of settlement, the parties had entered the final stages of pre-trial discovery and were scheduled to conduct an additional forty depositions of individual cooperative representatives, defense experts, and remaining fact witnesses. For these reasons, this Court finds the parties fully appreciated the landscape of the case and were deeply familiar with the potential strengths and weaknesses of their various positions.

C. Circumstances Surrounding Settlement Negotiations

The record demonstrates the settlement was the product of good faith negotiations. By mediating this matter four times throughout the litigation—twice with this Court at the request of the Parties—it was particularly evident that the parties were not desperate to settle.[9] Rather,

[9] The other two mediations were overseen by Honorable Joseph F. Anderson, Jr. Oversight by this Court and Judge Anderson further demonstrates the absence of collusion. *See Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295-96 (5th Cir. 2017) (noting that a strong presumption against collusion exists whenever the settlement is overseen by a reputable mediator); *see also Brown*, 318 F.R.D. at 571 (noting the assistance of a professional mediator in a formal mediation settlement can be a factor weighing in favor of fairness).

counsel were dedicated to zealously advocating their positions. Because of the parties' earnest willingness to try the case, the negotiations were intricate and concessions were made sparingly.

After three unsuccessful mediation attempts, the final mediation was initiated following the case's remand to state court after SCE&G's November 2019 removal to federal court. Upon agreement by all parties, this Court presided over the final mediation. This high level negotiation occurred following several months of significant settlement discovery and analysis surrounding: (1) the amounts expended by the Customer Class during the Project, (2) Defendants' abilities to pay, and (3) the long-term economic impact of any judgment or settlement on the Customer Class. The resulting settlement represents a significant return of funds expended during the interim of the Project to the Customer Class, as well as additional rate relief to benefit the Class over the next four years.

Given this Court's familiarity with the case and the nuanced procedural posture and substantive law, this Court attests the settlement is not the product of collusion. Rather, the settlement is a hard-fought resolution among competent adversaries dedicated to client advocacy.

D. Experience of Counsel

Counsel's experience supports the fairness of the settlement. Class Counsel collectively have over two centuries of experience litigating complex matters and class action cases. Further, they have been champions of novel issues and possess significant appellate experience. Similarly, Defendants were represented by premier firms hailing from South Carolina and across the country with tremendous complex litigation experience. Defense counsel rigorously defended this case during its pendency and would have continued to do so at trial.

There is no evidence that this settlement was the product of anything other than arms' length negotiations. Accordingly, this Court finds the settlement in this case is fair.

III. ADEQUACY

Having found the proposed settlement is fair, this Court must now consider whether the settlement is adequate. This prong hinges on the value of the settlement in light of the damages, and the respective merits of the claims and defenses. *In re: Lumber Liquidators*, 952 F.3d at 485 (upholding the district court's finding of adequacy where the court was familiar with the strengths and weaknesses of the claims and the "existence of difficulties of proof or strong defenses"); s*ee also In re Jiffy Lube*, 927 F.2d at 159.

As with fairness, this Court finds the Fourth Circuit factors are an appropriate standard to assess the adequacy of the proposed settlement. With that in mind, the Court now turns to each of those factors.

A. The Relative Strength of the Class Claims on the Merits Versus the Value of the Recovery

Class Counsel developed an argument that Defendants should have ceased construction in April 2012, instead of signing off on the Full Notice to Proceed. Advancing this theory through all forms of discovery, Class Counsel estimated customers were assessed $540 million in advanced financing costs from Full Notice to Proceed through stopping construction.[10] By procuring $520 million in cash, Class Counsel recovered 96% of the costs at the core of Class Counsel's theory of recovery. Furthermore, the settlement represents more than 70% of the total amount estimated to have been assessed to the Class from the Project's inception to stopping construction. Additionally, Class Counsel secured a four-year Rate Freeze constituting an additional $510 million benefit to the Class. This Court finds the substantial recovery and significant future relief weigh in favor of adequacy.

[10] *See* Aff. of John Alphin, ¶ 4 (Ex. 2 to Fee Petition).

B. The Existence of Difficulties of Proof or Strong Defenses Plaintiffs Were Likely to Encounter at Trial

While Class Counsel strongly believed in the merits of their arguments, liability in this case was nevertheless highly contested. Throughout the case, Santee Cooper maintained that its Enabling Act requires it to collect rates sufficient to cover indebtedness, even if the debt was incurred in a negligent manner. No matter how this novel issue was decided by this Court, it would have been ripe for appellate review, creating further risk of delay in finality for the parties and potential non-recovery.

Separately, SCE&G asserted that it owes no duty to the Class. While the Honorable John C. Hayes, III, had previously denied SCE&G's motion to dismiss on this issue, this Court had not resolved this issue.[11] Rather, the Court indicated the question of duty was a mixed question of law and fact for the jury to decide. Regardless of the outcome, it is certain this issue also would have been appealed.

In the background of these two formidable defenses is a broader nuclear landscape in which lawsuits across the country seeking recovery for failed nuclear construction have been dismissed.[12] Because of the nuance and uncharted path, it is even more likely that an appeal would occur if the case proceeded to trial. For these reasons, this Court finds when balanced against the proposed settlement amount, the substantial risk of an adverse result at trial or a complex appeal from a successful result weighs in favor of adequacy.

[11] *See* Order Den. Def. SCE&G's Mot. to Dismiss filed May 20, 2019.

[12] A trial court in Mississippi dismissed such a claim just prior to the inception of this lawsuit. *Biloxi Freezing & Processing, Inc., v. Miss. Power Co.*, C.A. No. A2491-2016-00077 (Miss. Cir. Ct. June 23, 2017). A Florida federal court had dismissed a similar action a year earlier. *Newton v. Duke Energy Fla., LLC*, No. 16-CV-60341-WPD (S.D. Fla. 2016).

C. Anticipated Duration and Expense of Additional Litigation

Despite the significant discovery that had occurred, sizable and costly discovery remained. Specifically, more than forty depositions remained to be taken, including depositions of corporate representatives for each electric cooperative and a majority of Defendants' experts.

This Court scheduled a three-week trial in Greenville, South Carolina. In connection with trial, Class Counsel have indicated that a number of Class Counsel would be present, which would invite sizable logistical costs, as well as costs associated with witnesses, including travel, lodging, and billable time. Class Counsel would also incur significant expense related to final trial preparation.

In addition, inevitable costs of appeals would flow from a trial of this complexity and magnitude, as well as the costs related to SCE&G's pending appeal to the Fourth Circuit of the district court's remand order. The potential Fourth Circuit decision reversing remand, in addition to changing the case's trajectory, would have exponentially increased costs. Specifically, Class Counsel would have funded final trial preparation in state court, including Class notice, before having to pivot to district court.

Accordingly, this Court finds the anticipated duration and expense of additional litigation had the parties not reached this settlement weighs in favor of adequacy.

D. Solvency of Defendants and the Likelihood of Recovery on a Litigated Judgment

As acknowledged in the Final Approval Motion, from inception of this case, concerns existed about Defendants' financial circumstances. During the litigation, SCANA merged with Dominion Energy and became known as Dominion Energy South Carolina. In addition, Santee Cooper's financial circumstances, shaped in part by the public political debate surrounding the Project's demise, required a thorough understanding of Defendants' abilities to pay.

The record evidences Class Counsel's laborious efforts to study and understand Defendants' respective financial positions to maximize the resolution for the Class. This includes engaging expert consultants and learning Defendants' accounting principles, rate making, and ability to pay. In so doing, Class Counsel was focused on balancing a maximum recovery against unanticipated economic consequences for the Class.

This Court finds that through these efforts, Class Counsel's decision to enter into a settlement was informed by the potential that Defendants would be unable to satisfy a judgment obtained at trial. Such an outcome would equate to a Pyrrhic victory for the Class without actual relief. For these reasons, this Court finds the proposed settlement adequately compensates members of the Customer Class, taking into account Defendants' finances.

E. Degree of Opposition to the Settlement

Finally, in its analysis on final approval this Court may consider "[t]he attitude of members of the class, as expressed directly or by failure to object, after notice, to the settlement[.]" *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). Even where opposition exists, a settlement will not be disturbed if the court finds fairness and adequacy exist. *Id.* at 1174; *see also In re: Lumber Liquidators*, 952 F.3d at 485-86 (concluding that 94 opt-outs and 12 objections among 178,859 class members supported a finding of adequacy).

Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%) have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable. *See In*

re Wachovia Corp. ERISA Litig., No. 3:09cv262, 2011 WL 5037183, at *4 (W.D.N.C. Oct. 24, 2011) (noting "the relatively few number of objections demonstrates the satisfaction of Class Members with the settlement result, as well as their implicit approval of its terms, including the requested fee award").

In *Jones v. Dominion Resource Services, Inc*., the class sent individual notice to almost 25,000 class members. There, only one class member pursued an objection. The court explained:

> [T]his very low incidence of objections, especially in light of the success of the direct notification, not only demonstrates the Class Members' satisfaction with the settlement result, but also ***shows their implicit approval of its terms***, including the attorneys' fee provision. ***Because such a high percentage of the class was directly notified of the attorneys' fee provision, and almost none of them objected to that provision, I consider the Class Members to have demonstrated approval of the instant fee request and agreement to pay such an amount.*** I FIND that the "clients" approval of the attorneys' fee request supports the reasonableness of the requested fee award.

601 F. Supp. 2d 756, 763 (S.D.W. Va. 2009) (emphasis added); *see also In re The Mills Corp.*, 265 F.R.D. at 262 (noting that two objections from 128,000 class members "enforces the reasonableness of that [fee] request in the Court's eyes").

Based upon the factors set forth herein, as well as the favorable response by the Class to the terms of the proposed settlement, this Court finds the settlement is fair, adequate, and in the best interests of the Customer Class.

IV. ATTORNEYS' FEES

Having determined the proposed settlement is fair and adequate, the Court next turns to the consideration of attorneys' fees and costs. Class Counsel has requested 15% of the Common

Benefit Fund payable following the effective date of the settlement consistent with the terms of the Settlement Agreement.[13]

A. The Nature of this Case Supports an Award of Reasonable Attorneys' Fees from a Common Fund

The United States Supreme Court has long recognized that an award of attorneys' fees may be derived from a common fund. *See generally Cent. R.R.& Banking Co. of Ga. v. Pettus*, 113 U.S. 116, 127-28 (1885) (recognizing the common fund doctrine for the first time); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (noting the existence of a judge-created exception allowing for an award of attorneys' fees and expenses where a plaintiff, usually on behalf of a class, maintains an action that benefits a group of others in the same manner as himself); *see also Robinson*, 2019 WL 2591153, at *13 ("[I]t is well settled that, [w]hen a class settlement results in a common fund for the benefit of class members, reasonable attorney's fees may be awarded from the common fund." (citations omitted)).

With respect to the common fund doctrine, the United States Supreme Court has found lawyers who recover a common fund are entitled to reasonable attorneys' fee from the fund as a whole. *Boeing, Co. v. Van Gemert*, 444 U.S. 472, 478 (1988). In discussing the common fund doctrine, the *Boeing* Court explained:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.

Id. at 478 (citations omitted).

[13] The Settlement Agreement is attached to the March 17, 2020 Order Granting Preliminary Approval of Class Action Settlement.

Similarly, the Supreme Court of South Carolina has found that courts may award reasonable attorneys' fees from a common fund to a party who, at its expense, "successfully maintains a suit for the creation, recovery, preservation, or increase of a common fund or common property." *Matter of Estate of Kay*, 423 S.C. 476, 489, 816 S.E.2d 542, 549 (2018) (quoting *Layman v. State*, 376 S.C. 434, 452, 658 S.E.2d 320, 329 (2008)); *see Petition of Crum*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941) (finding that the basis for the common fund doctrine is to allow one who preserves or protects a common fund for herself and others to share in the expenses of preserving the fund with those so benefitted).

In *Layman*, the Supreme Court of South Carolina recognized that "when awarding fees to be paid from a common fund, courts often use the common fund itself [rather than a lodestar] as a measure of the litigation's 'success.'" 376 S.C. at 452-53, 658 S.E.2d at 330. Accordingly, "[t]hese courts consequently base an award of attorney[s'] fees on a percentage of the common fund created, known as the 'percentage-of-the-recovery' approach." *Id*. (citing *Edmonds v. United States*, 658 F. Supp. 1126, 1144 (D.S.C. 1987) (expressing a preference for the percentage-of-the-recovery method when awarding fees from a common fund)).

This Court finds that the common fund doctrine, and percentage-of-the-recovery method, is an appropriate way to determine attorneys' fees and costs. This finding is based on the complexity and duration of the litigation and Class Counsel's success in numerous motions in state and federal courts, asserting and withstanding tremendous pressure in discovery, and negotiation of a significant recovery for the Customer Class.

B. Application of the factors set forth in Jackson v. Speed supports an award of attorneys' fees of 15% from the Common Benefit Fund

In assessing a percentage-of-the-recovery, the Court must consider what constitutes a "reasonable" award, given the specific circumstances of the case. The Supreme Court of South

Carolina has previously directed courts to look to the factors set forth in *Jackson v. Speed* to determine reasonableness. 326 S.C. 289, 486 S.E.2d 750 (1997). These factors include: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Id*. at 308, 486 S.E.2d at 760; *see Condon v. State*, 354 S.C. 634, 638, 583 S.E.2d 430, 432 (2003) (upholding a circuit court's award of attorneys' fees of 28% of the common fund plus costs).

1. *The nature, extent, and difficulty of the case*

Lawyers often turn to prior cases for legal blueprints to mirror their pleadings, legal arguments, and discovery requests. Confronted with landmark issues, Class Counsel became founding architects in seeking recovery for failed nuclear construction and forced advanced cost recovery by customers. Through their efforts they advanced novel theories of liability and bore all risks associated with attempting to address unsettled and unknown areas of law. In their Fee Petition, Class Counsel provide ample information showing that experienced South Carolina lawyers declined to litigate these issues because of the inherent risks and purported inability to succeed.[14]

Even as Class Counsel pushed ahead, they were acutely aware of rulings throughout the country precluding any recovery for customers under similar circumstances.[15] As the *Cook* litigation progressed, the Eleventh Circuit found "that utilities . . . should be able to recoup from their customers the costs associated with a project for the construction of a nuclear power plant, and that they should not have to return funds received even if the project is not completed."

[14] *See* Aff. of Vincent Sheheen (Ex. 13 to Fee Petition).
[15] *See supra*, n.11.

Newton v. Duke Energy Fla., LLC, 895 F.3d 1270, 1276 (11th Cir. 2018). Despite a dreary foreshadowing, Class Counsel persisted.

Such effort must be recognized. As Judge Anderson noted in *Montague v. Dixie National Life Insurance Co.*, "the riskier the case, the greater the justification for a substantial fee award." 3:09-00687-JFA, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011); *see also In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 13 CIV 7789 (LGS), 2018 WL 5839691, at *3 (S.D.N.Y. Nov. 8, 2018) (finding that the risks of litigation "should be considered as of when the case is filed").

This Court finds that a settlement representing 96% of the funds Class Counsel would seek at trial is a monumental achievement. Coupled with the substantial risk of litigation and the national trend of non-recovery in similar cases, this recovery is extraordinary. For these reasons, the Court finds this factor supports Class Counsel's fee request.

2. *The time necessarily devoted to the case*

There is no doubt that this case usurped significant amounts of time from Class Counsel. An accounting of hours would be feckless in a circumstance like this one given the duration and complexity of the litigation. *See generally In re Thirteen Appeals Arising out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (noting that "the [percentage-of-fund] method in a common fund case enhances efficiency, or, put in the reverse, using the lodestar method in such a case encourages inefficiency").

For more than two and a half years, Class Counsel tirelessly dedicated themselves to litigating this case. At inception, Class Counsel had to familiarize themselves with the intricacies of utility financing, accounting, and ratemaking; the Santee Cooper Enabling Act; the EPC contract; and the general vernacular of a construction mega-project. Class Counsel were met with monumental amounts of discovery and repeated challenges to the production of relevant material.

And over the life of this case, Class Counsel litigated in multiple forums, including circuit court, the South Carolina Court of Appeals, the Supreme Court of South Carolina, federal district court, and the Fourth Circuit.

In assessing this factor, this Court has had a unique vantage point. Having been assigned as the presiding judge over this complex litigation and overseeing two mediations, this Court has extensive exposure and insight into the facts and legal issues. Although the case was being vigorously developed at the time of the October 2019 mediation, when mediation reconvened four months later, the liability theory had progressed tremendously through Class Counsel's seasoned techniques and trial preparation—progress that could only be achieved through laborious, time consuming efforts. Accordingly, this Court finds that the time necessarily devoted to this case supports Class Counsel's fee request.

3. *The professional standing of counsel*

Class Counsel has provided a substantial recitation of their efforts and achievements. Rather than recite every detail, the Court incorporates this portion of the Fee Petition by reference and finds Class Counsel are among the most accomplished at pursuing and prosecuting class action and complex litigation cases in the state of South Carolina. In addition, Class Counsel were met by equally able counsel representing all parties involved. Every party in this case was represented by premier firms from throughout the state of South Carolina and the nation. This case had no shortage of distinguished and able attorneys well-versed in litigation of this scope and magnitude. Accordingly, this Court finds the collective experience of Class Counsel and the formidable opponents defending this case weigh in favor of approval of Class Counsel's fee request.

4. *Contingency of the compensation*

Class Counsel's representation stemmed from contingency agreements. As such, Class Counsel have received no compensation for their work spanning two and half years. Nor have they been compensated for the more than $1.5 million Class Counsel has advanced in costs. While Class Counsel's retainer agreements provide for contingency fees of 33.3% and 40% respectively,[16] Class Counsel seek an award of 15% of the Common Benefit Fund. Given these facts, this factor weighs in favor of Class Counsel's fee request.

5. *Beneficial results obtained*

"[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (quoting *Hensley v. Eckerhart*, 461 U.S. 424 (1983)); *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 247 (4th Cir. 2010). Often, in ascertaining the degree of success in a class action, courts look to what the class could reasonably expect to obtain at trial, not the total amount of alleged losses. *See generally Newberg on Class Actions*, § 13.51 (5th Ed.); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at *2 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 272 F.Appx. 9 (2nd Cir. 2008) (approving a settlement of 8% of the claimed damages, noting that the class could only realistically recover a much lesser percentage of the total claimed damages at trial).[17]

As set forth herein, and as supported by the Affidavit of John Alphin, a recovery of $520 million represents a nearly 96% recovery of the total amount estimated to have been paid by the

[16] *See* Affs. of Class Representatives Jessica Cook & Chris Kolbe (Exs. 19 & 20 to Fee Petition).
[17] As noted in the Fee Petition, many courts have approved settlements where the overall degree of success ranged anywhere from 20% to 50% of the purported damages, but have nevertheless qualified these cases as impressive results on behalf of the class. *E.g., In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 757, 764-65 (S.D. Ohio 2007) (finding recovery of 20% of the alleged losses constituted an "outstanding recovery").

Customer Class from Full Notice to Proceed until construction stopped, and a 70% recovery from Project inception to construction stopping. Further, this settlement includes an additional $510 million benefit for the Class in future rate relief.

The Court finds that the results achieved by Class Counsel will provide significant reimbursement to Class members for what they paid into the failed Project. Furthermore, the Court finds Class Counsel achieved what few have been able to in any class context by providing nearly full relief on what the Customer Class could reasonably expect to achieve at trial, as well as significant future relief. This degree of success supports Class Counsel's fee request.

6. *Customary legal fees for similar services*

Class Counsel's fee request is well-below previously approved percentage-of-the-recovery fees in common fund cases in South Carolina. For example, in *Condon*, the Supreme Court of South Carolina upheld the circuit court's award of a 28% attorneys' fee assessed from the common fund. 354 S.C. at 644, 583 S.E.2d at 435. In *Spartanburg Regional Health Services District,, Inc. v. Hillenbrand Industries, Inc.*, the Honorable Henry F. Floyd awarded a 25% fee of roughly $117 million on a total settlement of $486.6 million, comprised of $337.5 million paid in cash and an agreement by defendants to change future pricing for an additional benefit of $131.1 million. C.A. No 7:03-2141-HFF, 2006 WL 8446464, at *5, n.3 (D.S.C. Aug. 15, 2006). In finding that the fee was supported by the circumstances, Judge Floyd noted:

1. Class Counsel had been litigating for over two and a half years;
2. The settlement was on the higher end of what was expected;
3. The case involved "novel and difficult" legal and economic issues;
4. Other law firms had rejected joining the litigation given its risk; and

5. Other class actions involving recoveries of more than $100 million included attorneys' fee awards between twenty and thirty percent for an average of 25.03% of the common fund.

Id. at *2-*4. Each factor considered by Judge Floyd is present in this case. Notably, here, Class Counsel seek a substantially reduced fee. In fact, if the Court accounted for the future benefit, Class Counsel's request would be 7.5% of the total recovery. Under either calculation, the percentage requested by Class Counsel is well below prior awards in large class action cases.[18]

Because of the limited number of class actions and fee awards in South Carolina, our courts have turned to other jurisdictions for guidance. *Condon*, 354 S.C. at 644, 583 S.E.2d at 435 (relying on similar cases in addressing the reasonableness of fees). Accordingly, in their Fee Petition, Class Counsel have included a recitation of class action cases where courts have upheld attorneys' fee awards of more than the 15% requested here.[19] In addition, Class Counsel have included multiple affidavits from lawyers across the state of South Carolina with vast experience in complex litigation, including class actions. All of these affidavits indicate that the 15% fee requested is reasonable given the results of this case and attorneys' fee awards in similar cases.

C. RICO Counsel

As set forth in the Fee Petition, several of the firms involved with Class Counsel in the federal RICO class action, *Glibowski v. SCANA Corporation*, No. 9:18-cv-00273-TLW (D.S.C.), were not counsel of record in this litigation. Nevertheless, Class Counsel agree that these RICO counsel contributed to the creation of the Common Benefit Fund through their efforts in the

[18] *See Montague*, 2011 WL 3266541, at *2 (noting "[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" and finding "[a]n award of fees in the range of 33% of the fund for work performed in the creation of the settlement fund has been held to be reasonable by many federal courts").
[19] *See* Fee Petition, p. 28.

Glibowski action. Moreover, the settlement in this action also settled the *Glibowski* action. The Court finds it appropriate to include these RICO counsel as Class Counsel and participants in the attorneys' fee award.

For these reasons, this Court finds Class Counsel's request for 15% of the Common Benefit Fund is well within the range of attorneys' fees awarded in similar cases and is appropriate in this case. Further, after conducting meetings with Class Counsel concerning the allocation of any fee award, this Court finds that the attorneys' fee award should be allocated among Class Counsel as set forth on Exhibit 22 to the Fee Petition.

V. CASE COSTS AND EXPENSES

It is within this Court's discretion to award reimbursement of reasonable costs from the Common Benefit Fund. *Condon*, 354 S.C. at 644, 583 S.E.2d at 435; *see Robinson*, 2019 WL 2591153, at *17 (noting that "courts generally permit recovery of costs advanced for litigation expenses, including document production, consulting with experts, and court and mediation costs" (citing *McClaran v. Carolina Ale House Operating Co., LLC*, C.A. No. 3:14-cv-03884-MBS, 2015 WL 5037836, *5 (D.S.C. Aug. 26, 2015))); *see In re Mills*, 265 F.R.D. at 265 (reimbursing counsel for costs including "expert fees, reproduction costs, mediation costs, and court costs"). Class Counsel request reimbursement of $1,543,893.08 in costs. Upon examination, this Court finds the costs incurred to be reasonable and approves reimbursement to Class Counsel from the Common Benefit Fund.

Class Counsel have also advised the Court that in addition to the costs of settlement administration to be paid from the Common Benefit Fund as set forth in the Settlement Agreement, costs not expected to exceed $60,000 will be incurred by two technology vendors, SEDC and National Information Solutions Cooperative (NISC), to provide cooperative customer billing data

necessary for the settlement distribution allocation. *See* Aff. of James L. Ward, Jr. (Ex. 3 to Final Approval Motion). The Court finds that these costs will be incurred for the common benefit and should be paid by the Settlement Administrator from the Common Benefit Fund.

VI. SERVICE AWARDS FOR CLASS REPRESENTATIVES

It is within this Court's discretion to award the Class representatives and named Plaintiffs a service award in recognition of their participation in the prosecution of this case. As noted in *Robinson, "*[a]t the conclusion of a successful class action case, it is common for courts exercising their discretion, to award special compensation to the Class Representative in recognition of the time and effort they have invested for the benefit of the Class." 2019 WL 2591153, at *17 (approving a service award of $15,000). In considering whether to award a service award, factors include whether the representative aided in discovery and trial preparation or sat for a deposition. *Weckesser v. Knight Enters., S.E., LLC*, 402 F. Supp. 3d 302, 306-7 (D.S.C. 2019).

Here, Class Counsel seek service awards to be paid from the Common Benefit Fund of $10,000 for the two named Class representatives, Jessica Cook and Chris Kolbe, who assisted in discovery and were deposed, and lesser awards of $2,500 each for the other named Plaintiffs, Corrine F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, and Ruth Ann Keffer, who were helpful in prosecution of the action, available to be deposed, and provided assistance in discovery. This Court hereby approves Class Counsel's request for individual service awards for the Class representatives and the named Plaintiffs.

VII. OBJECTIONS

As previously noted, the Court received three objections by nine Class Members. For the reasons discussed below, the Court finds none of the objections have demonstrated that the

Settlement Agreement is inadequate or unfair so as to upend this Court's decision to grant final approval.

A. Joint Objection by Seven Class Members

Seven individual Class members filed a joint objection criticizing the manner in which the attorneys' fees are paid.[20] Specifically, the objection takes issue with the fact that the Class will be paid in two installments while Class Counsel is compensated entirely by the first installment. This Court finds allowing Class Counsel to receive their compensation from the first installment is fair to all parties and declines to disrupt that balance.

The equities require Class Counsel receive recompense, and that necessarily requires some expense to the Class. *See Layman*, 376 S.C. at 452, 658 S.E.2d at 329 ("The justification for awarding attorneys' fees in this manner is based on the principle that one who preserves or protects a common fund works for others as well as for himself, and the others so benefited should bear their just share of the expenses." (internal quotations omitted)). Class Counsel bore all the financial costs and risk as they labored through this case for two and a half years. Had they failed, the Class would owe no costs or fees. And the inclusion of attorneys' fees in this initial distribution does not enhance any financial risk to the Class. This Court is mindful that its overarching concern is fairness to the Class, but it finds no conflict in finally allowing Class Counsel their compensation. The Court is similarly unpersuaded by the objection's concern that Santee Cooper may never pay the second or third annual installments. This Court is well-apprised of the financial situation of Santee Cooper (and generally how markets may fluctuate). The Court notes that on the effective date of this Order, the Class members are no longer mere customers, but will also

[20] Significantly, the objectors specified that they took no issue with the amount to be awarded and believed Class Counsel deserved the 15% requested.

retain the status as judgment creditors and will enjoy the benefit of this Court overseeing the administration of this settlement. This combination mitigates any risk voiced by the objection. To the extent the force of this Order is in doubt, this Court unequivocally directs Santee Cooper and Central Electric, to the extent it is responsible for ensuring the Customer Benefit Fund is distributed to the Indirect Customer Class Members, to comply with the provisions of the Settlement Agreement, including Santee Cooper's payment of each installment to the Common Benefit Fund. This Court's continued jurisdiction will ensure that deviations are corrected.

B. Pro Se Objection by Paul Spence

Mr. Spence raises a number of concerns in his objection that this Court already considered in granting preliminary approval or that have been addressed through the course of final approval.[21] As to the timeliness and quality of the notice, Mr. Spence received timely notice that was administered in accord with the Notice Plan approved when this Court granted preliminary approval of the settlement. This notice provided him with the necessary information to determine whether to participate in the settlement or opt-out. As he references the settlement website, he was adequately apprised of how to access the breakdown of the administrative costs and expenses, all of which have been fully considered in this Court's analysis of whether to grant final approval.[22]

[21] Some of the objection simply has no legal basis, including whether Class Counsel should have characterized the damages as something other than compensatory. The settlement is designed to refund the amounts paid by the Class members, so regardless of nomenclature, the damages are compensatory in nature.

[22] Additionally, many of his concerns are simply unfounded. This Court has considered the number of opt-outs, which is 78 out of over 1.65 million, so no appreciable amount of the Common Benefit Fund will be returned to Defendants. Finally, as this Court will retain jurisdiction to ensure the proper execution of the settlement, Mr. Spence's fear over the implementation and administration of the settlement should be ameliorated.

C. Objection by Century Aluminum of South Carolina, Inc.

Century Aluminum filed an objection taking issue with the methodology utilized in allocating the settlement amongst the Class members, and the language of the release. Much of Century Aluminum's objection focuses on not knowing the manner of allocation and its perception that Santee Cooper enjoyed significant discretion in determining Class member allocation. However, as the motion for final approval explained, the methodology utilized was the result of a collaborative inquiry between Class Counsel, Santee Cooper, Central Electric, and the cooperatives. Class Counsel ultimately chose the methodology they believe best served the interests of the Class in receiving fair allocations.

The Court initially concluded that Century Aluminum offered no evidence that the Curtailable Supplemental Power rates were designed or calculated, even in part, to pay Project costs. However, in its motion for reconsideration, Century Aluminum points to Exhibit A to its Response to Motion for Final Approval, which is a Santee Cooper 2009 rate study. The rate study includes descriptions of both Interruptible and a rate known as L-09-SP (also referred to as "SP-09"). While several of the Curtailable Supplemental rates reflect the capture of costs from a hypothetical plant, the creation and design of the SP-09 rate, unlike the predecessor Curtailable Supplemental rates, was done at a time when the costs were actually being incurred for construction of the Project and includes a production demand component. This distinguishing reality disqualifies the predecessor rates from meeting the class definition while making it likely that payors of the SP-09 rate should be included in the class. After further analysis, Class Counsel agrees with respect to the SP-09 rate. The other parties—Santee Cooper, Dominion, and Central Electric—take no position on Class Counsel's determination, either now or in the administration

of the Common Benefit Fund.[23] Thus, the Court finds that it is fair and reasonable for purchases under the SP-09 rate to be included in the refund methodology in the same manner as purchases under the Interruptible power rate. As explained above, the Court rejects Century Aluminum's contention that predecessor Curtailable Supplemental Power rates should be credited in the allocation methodology, because there is no evidence that those rates were calculated to pay the Project costs.

With the inclusion of the SP-09 rate, this Court finds that the methodology reasonably and fairly allocates the funds among the various Class members. Because not every ratepayer increase was attributable to the construction of the Project, and the amounts attributable differ between the types of customers receiving electricity from Santee Cooper, the refunds must reflect that.

Finally, Century Aluminum objects to the language of the release, suggesting it is ambiguous and could be utilized overbroadly. This Court disagrees and finds the release speaks for itself and approves it as currently drafted.

CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT:**

1. This Court has jurisdiction over South Carolina Public Service Authority, W. Leighton Lord, III, William A. Finn, Barry Wynn, Kristofer Clark, Merrell W. Floyd, J. Calhoun Land, IV, Stephen H. Mudge, Peggy H. Pinnell, Dan J. Ray, David F. Singleton, Jack F. Wolfe, Jr., Lonnie N. Carter, William Marion Cherry, Jr., Michael R. Crosby, Central Electric Power Cooperative, Inc., Palmetto Electric Cooperative, Inc., Dominion Energy South Carolina, Inc.,

[23] Dominion has had no role in, and thus takes no position on, any aspect of the allocation plan associated with any proceeds from the settlement of this matter. As a consequence, Dominion takes no position on Century Aluminum's contention that the SP-09 rate should be included in the refund methodology, Class Counsel's conclusion with respect to this contention, or the resolution of the objection associated with this contention.

f/k/a South Carolina Electric & Gas Company, Dominion Energy Southeast Services, Inc., f/k/a SCANA Services, Inc., SCANA Corporation, Gregory E. Aliff, James A. Bennett, John F.A.V. Cecil, Sharon A. Decker, Lynne M. Miller, James W. Roquemore, Alfredo Trujillo, Maceo K. Sloan, James Micali, Kevin Marsh, Stephen Byrne, Jimmy Addison, Martin Phalen, Mark Cannon, Russell Harris, and Ronald Lindsay (collectively, "All Defendants") and all Class members (including all objectors), and the claims asserted in this action for purposes of the settlement.

2. The Settlement Agreement was entered into in good faith following arms' length negotiations and is non-collusive.

3. This Court **GRANTS** the Final Approval Motion and finds that the settlement and its planned implementation is in all respects fair, adequate, and in the best interests of the Class. Therefore, all Class members who have not requested exclusion are bound by this Order finally approving the settlement.

CLASS CERTIFICATION

4. The previously certified class set forth below (the "Class") is now finally certified, solely for purposes of this settlement, pursuant to South Carolina Rule of Civil Procedure 23(a) and (b)(3):

> All Santee Cooper residential, commercial, industrial, and other customers, both direct and indirect, who paid utility bills that included rates calculated, in part, to pay pre-construction, capital, in-service, construction, interest, and other pre-operational costs associated with the V.C. Summer Nuclear Reactor Unit 2 and 3 Project from January 1, 2007, through January 31, 2020.

5. The Court finds that certification of the Class solely for purposes of this settlement is appropriate in that (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members; (c) Plaintiffs' claims are typical of the Class; (d)

Plaintiffs have fairly and adequately protected the interests of the Class and will continue to do so; (e) Class counsel is adequate; and (f) a class action is the superior method for the fair and efficient adjudication of this controversy.

6. Jessica Cook and Chris Kolbe are designated as representatives of the Class.

7. Speights & Solomons, LLC; McGowan, Hood & Felder, LLC; Strom Law Firm, LLC; Richardson Patrick Westbrook & Brickman, LLC; Savage, Royal & Sheheen, LLP; Bell Legal Group; McCullough Khan, LLC; Galvin Law Group, LLC; McCallion & Associates, LLP; Holman Law, PC; Janet, Janet & Suggs, LLC; and The Law Offices of Jason E. Taylor, PC are included as Class Counsel.

CLASS NOTICE

8. Notice of the settlement, including the Customer Benefit Fund and the relief via the Rate Freeze, was given to Class members by email and/or mail in accordance with the Settlement Agreement and this Court's preliminary approval order. The notice adequately informed Class Members of the Customer Benefit Fund and the Rate Freeze. The Class notice was also published in the *Columbia State*, *Greenville News*, *Charleston Post & Courier*, *Aiken Standard*, *Beaufort Gazette / Bluffton Island Packet Combo*, *Rock Hill Herald*, and *Myrtle Beach Sun News*. Class Counsel also ran internet banner ads totaling approximately 12.3 million impressions on Google Display Ad Network and Facebook. Finally, Class Counsel set up a settlement website and a toll-free line to provide additional information and to answer inquiries from Class members. These forms of Class notice fully complied with the requirements of Rule 23(c) and due process, constituted the best notice practicable under the circumstances, and were due and sufficient notice to all persons entitled to notice of the settlement of this lawsuit.

OBJECTIONS AND OPT-OUTS

9. After the extensive notice provided to Class members as described above, including individual notice to over 1.65 million Class members, there have been only three objections to the settlement. Specifically, seven Class members—Lindsey F. Smith, Travis B. Renwick, Justin M. Tedder, Rusty Wannamaker, Caroline H. Robinson, William E. Robinson, and Peggy E. Dantzler—filed a joint objection to final approval; Paul Spence submitted an individual objection; and Century Aluminum of South Carolina, Inc. submitted an individual objection. These objectors represent less than 0.00054% of the Class. As discussed above, the Court has reviewed the objections and finds them to be without merit, except for Century Aluminum's contention that purchases under the SP-09 rate should be included in the refund methodology.

10. Seventy-eight Class members have opted out of the settlement. The Court recognizes that new customers who are not in the Class will join Santee Cooper and the electric cooperatives. The Rate Freeze benefit will be provided to all customers under the frozen rates.

AWARD OF ATTORNEY'S FEES AND COSTS

11. The Court has considered Class Counsel's Fee Petition and the joint objectors' objections to the proposed upfront payment of the full amount of attorneys' fees awarded to Class Counsel. The Court also heard extensive argument on Class Counsel's request for attorneys' fees at the fairness hearing on July 20, 2020, the record of which is incorporated by reference.

12. Class Counsel seek 15% of the Common Benefit Fund for their attorneys' fee award. Class Counsel also request reimbursement of expenses in the amount of $1,543,893.08. Defendants do not object to Class Counsel's request for attorneys' fees and costs. The Court has reviewed the joint objectors' challenge to Class Counsel's Fee Petition and finds it without merit.

13. The Supreme Court of South Carolina has recognized that the percentage-of-recovery method is the accepted way to award fees from a common fund. *See Layman*, 376 S.C. at 452-53, 658 S.E.2d at 330. The Court may also consider the following six factors when determining the reasonableness of attorneys' fees: "(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*, 326 S.C. at 308, 486 S.E.2d at 760. Applying these factors, the Court finds that the requested attorneys' fees of 15% of the Common Benefit Fund is fair and reasonable.

14. The Court hereby **GRANTS** Class Counsel's Fee Petition and awards attorneys' fees in the amount of 15% of the Common Benefit Fund and costs in the amount of $1,543,893.08. The attorneys' fees are to be paid in full consistent with the terms of the Settlement Agreement and distributed among Class Counsel as follows:

FIRM	PERCENTAGE
Bell Legal Group, LLC	5.25%
Galvin Law Group, LLC	4.0%
Holman Law, PC and McCallion & Associates, LLP	0.75%
Janet, Janet & Suggs, LLC and The Law Offices of Jason E. Taylor, PC	0.75%
McCullough Khan, LLC	5.25%
McGowan, Hood & Felder, LLC	18.5%
Richardson, Patrick, Westbrook & Brickman, LLC	14.75%
Savage, Royall and Sheheen, LLP	13.25%
Speights & Solomons, LLC	19.0%

Strom Law Firm, LLC	18.5%

15. The Court also **GRANTS** Class Counsel's request for service awards for the Class representatives, Jessica Cook and Chris Kolbe, in the amount of $10,000 each, and for the named Plaintiffs, Corrine F. Bowers & Son, Cyril B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna Jenkins, and Ruth Ann Keffer, in the amount of $2500 each. The Court finds that these payments are justified by the Class representatives' and named Plaintiffs' service to the Class.

16. The Court also finds that the costs to be incurred by SEDC and NISC in providing cooperative customer billing data necessary for the settlement distribution allocation will be incurred for the common benefit and should be paid by the Settlement Administrator from the Common Benefit Fund.

CLASS BENEFITS AND IMPLEMENTATION OF SETTLEMENT

17. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder. The Settling Parties will cooperate with each other to the extent reasonably necessary to effectuate and implement the terms and conditions of the Settlement Agreement and settlement and will exercise their best efforts to accomplish the terms and conditions of the Settlement Agreement and settlement as described in this Order.

18. The Rate Freeze and process for annual compliance reporting as described by Santee Cooper and Central Electric complies with the Settlement Agreement and law. Customers have been appropriately notified of the Rate Freeze.

19. For customers other than Central Electric, the Rate Freeze will be effective for the customers subject to the frozen rates for all bills rendered on or after August 16, 2020, through all bills rendered on or before January 15, 2025. For Central Electric, the Rate Freeze will be effective

for service rendered on or after August 1, 2020, through service rendered on or before December 31, 2024. The Rate Freeze will be implemented with respect to Santee Cooper's residential, commercial, lighting, and industrial customers by computing charges throughout the Rate Freeze period using rates and charges set forth in Santee Cooper's following rate schedules: RG-17, RT-17, GA-17, GB-17, GV-17, GT-17, GL-17, TP-17, TA-17, TL-17, MS-17, OL-17, L-17, L-17-I, and L-17-EP-O. The fuel, demand sales, and economic development sales adjustment clauses of the foregoing rate schedules will be suspended from adjusting during the Rate Freeze Period, and adjustment values will be frozen at the amounts specified in Schedule B of the Customer Settlement Agreement for the Rate Freeze Period. The fuel adjustment clause of the Authority's municipal customers whose rates are based on the Municipal Light and Power rate will be suspended from adjustment during the Rate Freeze Period, and the Rate Freeze will be applied to these customers by applying the fuel adjustment clause referenced in the rate schedule using levels set forth for the Schedule L-17 rate in Schedule B of the Customer Settlement Agreement; provided however, the Authority is permitted to participate in competitive bidding processes to retain its contracts with municipal customers upon their expiration. Similarly, frozen rates applicable to Central Electric are described in Schedule A of the Settlement Agreement. Santee Cooper's Board plans to consider a resolution approving the implementation of the Rate Freeze following approval of the settlement via entry of this Order. The draft resolution presented by Santee Cooper, and the implementation of the Rate Freeze as presented to the Court and in the draft resolution, comports with the Settlement Agreement and the law, including Santee Cooper's Enabling Act, S.C. Code Ann. § 58-31-10, *et seq*. The frozen rate schedules and Schedules A and B will be posted by Santee Cooper on its website.

20. Class Counsel, Santee Cooper, and Central Electric have presented descriptions of the methodologies selected by Class Counsel to distribute the Customer Benefit Fund to the Class. Those methodologies are reasonable and fair to all Class members.

21. To comply with the Agreement, Santee Cooper and Central Electric will submit annual compliance reports addressing the topics as presented to the Court.

OTHER PROVISIONS

22. The Settlement Agreement and this Order are binding on and will have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Released Claims maintained by or on behalf of the Releasors.

23. The claims in the Action, including all cross-claims, are hereby dismissed with prejudice and, except as expressly and explicitly provided for in the Settlement Agreement, without costs.

24. The Releasees are hereby discharged and released from all Released Claims.

25. The Releasors are hereby permanently barred and enjoined from instituting and prosecuting any and all of the Released Claims.

26. The Opt-Out List is hereby approved as a complete list of all persons who have timely and validly requested exclusion from the Class and, accordingly, will neither share in nor be bound by the Final Approval Order and Judgment.

27. The Settlement Agreement, settlement, and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of a presumption, concession, acknowledgment, or an admission of liability or of any wrongdoing by any Defendant or any Releasee or of the suitability of these or similar claims to class treatment for litigation, trial, or any other purpose except settlement.

28. The Court hereby reserves continuing and exclusive jurisdiction over the settlement, including all future proceedings concerning the administration, consummation, and enforcement of the Settlement Agreement.

29. Neither the Settlement Agreement, preliminary approval order, this Order finally approving the settlement, nor any of their provisions, nor any of the documents, negotiations, or proceedings relating in any way to the settlement, shall be construed as or deemed to be evidence of an admission or concession of any kind by any person, including All Defendants, nor of the certifiability of any class other than the Class described herein, and shall not be offered or received in evidence in this or any other action or proceeding except in an action brought to enforce the terms of the Settlement Agreement or except as may be required by law or court order.

30. This Court retains jurisdiction for the purposes of enforcing the terms of the settlement and of this Final Judgment and Order.

AND IT IS SO ORDERED.

Dated:_____ By:_____

Jean Hoefer Toal
Chief Justice, Retired
Acting Circuit Court Judge

Greenville Common Pleas

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

Case Number: 2019CP2306675

Type: Order/Approval Of Settlement

So Ordered

Jean H. Toal