

STATE OF SOUTH CAROLINA,)
)
COUNTY OF HORRY)
)
GEORGE M. HEARN JR., ON BEHALF)
OF HIMSELF AND ALL OTHERS)
SIMILARLY SITUATED,)
)
Plaintiff,)
)
vs.)
)
SOUTH CAROLINA PUBLIC SERVICE)
AUTHORITY D/B/A SANTEE COOPER,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

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

BARNWELL, South Carolina

s/Matthew A. Nickles

Plaintiff/Attorney for Plaintiff

Dated: August 16, 2017

Address: RPWB, LLC
MATTHEW A. NICKLES
1730 JACKSON STREET
BARNWELL, SC 29812

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 George M. Hearn Jr., on behalf of himself,)
 and all others similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 South Carolina Public Service)
 Authority d/b/a Santee Cooper)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO: _____

**CLASS ACTION
 COMPLAINT
 (Jury Trial Demanded)**

Breach of Duty
 Breach of Contract
 Declaratory/Injunctive relief
 Unjust Enrichment
 Money Had and Received
 Affirmative Injunctive Relief
 Violation of Due Process

TO: DEFENDANT NAMED ABOVE

Plaintiff George M. Hearn Jr. (“Hearn”), individually and on behalf of all others similarly situated, (collectively, “Plaintiffs”) by and through their undersigned counsel, and complaining of the Defendant herein, respectfully shows unto this Court the following:

PARTIES AND JURISDICTION

1. Plaintiff George M. Hearn Jr. is and was at all times relevant herein a resident of Horry County, South Carolina, and a customer and rate payer of Defendant South Carolina Public Service Authority d/b/a Santee Cooper.

2. Defendant South Carolina Public Service Authority d/b/a Santee Cooper (“Santee Cooper”) is a body corporate and politic of the State of South Carolina organized and existing under the laws of this state, including but not limited to S.C. Code Ann. § 58-31-10, with its principal place of business in Berkeley County, South Carolina. Among the powers granted to Santee Cooper is the power to sue and be sued.

3. Defendant Santee Cooper has the power to fix, alter, charge and collect charges for services rendered by or for any commodities furnished by them at reasonable rates to be

determined by their Board of Directors, all pursuant to §§ 58-31-20, 58-31-30(13) and subject to further limitations of S. C. Code Ann. §58-31-360.

4. Generally, there are three types of customers served by Defendant Santee Cooper: 1) Wholesale customers; 2) Military and Large Industrial; and 3) Residential, Commercial Small Industrial and Other (“residential/commercial customers”). The first two types of customers have contracts for electricity governed by costs of services provided by the Defendant. Plaintiff Hearn, individually, and all class members, are in the third group of customers as residential/commercial customers, and are charged rates set by Santee Cooper for the services provided to them.

5. This civil action arises out of events concerning Santee Cooper’s business operations and investments affecting its customers in South Carolina.

6. This Honorable Court has jurisdiction over all matters herein, and jurisdiction is proper because a substantial portion of Santee Cooper’s business is conducted in Horry County and a substantial portion of the acts and omissions giving rise to this cause of action take place in Horry County.

CLASS ALLEGATIONS

7. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

8. Plaintiff Hearn brings this action pursuant to Rule 23, SCRCF, on behalf of himself and a class of similarly situated persons.

9. The Class (“Class”) is defined as any current or former residential/commercial customer of Santee Cooper who paid increased rates from November 2009 to present.

10. The number of retail/commercial customers of Santee Cooper totals more than 163,000 across three counties. Therefore, the members of the Class are so numerous that the individual joinder of all members is impractical.

11. There are questions of law and fact common to the Class which predominate over any questions affecting only individual members of the class.

12. Plaintiff Hearn's claims are typical of the claims of the Class and Plaintiff Hearn does not have interests adverse to other members of the class.

13. Plaintiff Hearn has retained counsels who are experienced in class action litigation and Plaintiff Hearn will fairly and adequately protect the interests of the Class.

14. A class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

15. Given the size of the individual Plaintiff Hearn's claims, many class members may not be able to seek legal redress individually for the wrongs committed by the Defendant.

16. The prosecution of separate actions by individual members of the class would create the risk of inconsistent adjudications.

17. Plaintiff Hearn seeks certification of the action as a class action so that the liability of the Defendants may be adjudicated.

18. Certification of the Class as requested herein will result in an orderly and expeditious administration of class claims, economy of time, effort and expense, and uniformity of decisions will be insured.

FACTUAL ALLEGATIONS

19. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though set forth fully herein.

20. Santee Cooper directed service to over 160,000 retail customers in numerous counties throughout South Carolina, including Berkeley, Georgetown, and Horry counties. According to its offering document, Santee Cooper's system serves directly or indirectly 2 Million customers in all 46 South Carolina counties.

21. Santee Cooper is governed by a 12-member board of directors appointed by the Governor, deemed qualified by the Senate Public Utilities Review Committee and confirmed by the state Senate.

22. Santee Cooper, as a public utility, is a quasi-state agency; thus, the board owes duties not to shareholders, but its customers and bondholders, as well as to the people of South Carolina by way of the people's elected representatives in the General Assembly and the Governor.

23. On or about May 2006, Santee Cooper's Board of Directors approved the permitting of two coal-fired units totaling around 1,320 megawatts at the Pee Dee Energy Campus, located on approximately 2,709 acres in Florence County, and the construction of Pee Dee Unit 1, described as a 600 megawatt (net) supercritical pulverized coal-fired unit.

24. Upon information and belief, extensive permitting from state and federal authorities is required before such a plant may be constructed. These permits include, but are not limited to: a Prevention of Significant Deterioration (PSD) construction permit from South Carolina Department of Health and Environmental Control ("DHEC"), an Environmental Impact Statement (EIS) and wetlands permit from the U.S. Army Corps of Engineers; a 401 Water Quality Certification; a National Pollutant Discharge Elimination System (NPDES) permit for ash ponds; and a solid waste landfill permit, all from DHEC.

25. Additional permitting on both the State and Federal levels are required after construction permits are received.

26. On or around May 31, 2006, Santee Cooper submitted a Prevention of Significant Deterioration (PSD) construction permit application to DHEC for the Pee Dee Energy Campus.

27. On or around September 28, 2006, DHEC provided Santee Cooper with a list of approved preconstruction activities that could be performed without approval of a PSD construction permit.

28. According to Santee Cooper's 2008 Annual Report, the Pee Dee Energy Campus was to be a "21st Century coal-fired plant...built in Florence County with the highest and best available environmental control technology. It will endure as one of the cleanest coal-fired plants in the country."

29. Further, Santee Cooper's 2008 Annual Report promised that the Pee Dee Energy Campus "will meet or exceed all state and federal environmental regulations."

30. According to Santee Cooper's 2008 Annual Report, in 2007, Santee Cooper issued tax-exempt municipal bonds in the amount of approximately \$342 million dollars to finance, in part, the construction of the Pee Dee plant.

31. Upon information and belief, in 2007 and/or 2008, Santee Cooper used a portion of the proceeds from the bond issuance to pay approximately \$249 million for a disassembled coal power plant "kit" from communist China (hereinafter the "Chinese Power Plant"), to be delivered to the Florence County site in South Carolina. Santee Cooper paid for this Chinese Power Plant even though it had not received or begun the process of applying for most of the Federal and State permits necessary to build or operate the Chinese Power Plant.

32. Upon information and belief, even at the time the Chinese Power Plant was purchased by Defendant Santee Cooper, the Federal and State regulations were such that the

Defendant could not possibly obtain all the necessary permits to construct or operate this particular plant as ordered from China.

33. On or around December 16, 2008, Santee Cooper did secure an air quality construction permit from DHEC for the Pee Dee Plant. Indeed, Santee Cooper had only received one of the construction permits of the many for which it had filed. Construction permits were required prior to the additional operation and environmental permits required for the actual operation of the Pee Dee plant.

34. According to Santee Cooper's 2008 Annual Report, in 2008, Santee Cooper issued an additional \$406 million dollars in tax-exempt municipal bonds to finance, in part, the construction of the Chinese Power Plant.

35. In 2009, Santee Cooper issued two additional bonds to finance, in part, the construction of the Chinese Power Plant on the Pee Dee Energy Campus. One set of tax-exempt bonds totaled approximately \$164 million, and a set of taxable bonds totaled approximately \$87 million.

36. As of May 20, 2009, Santee Cooper had issued approximately \$842 million in bonds to finance, in part, the Chinese Power Plant on the Pee Dee Energy Campus. The revenue bonds issued to pay for the Chinese Power Plant and the Pee Dee Energy Campus are paid for by ongoing payments by its rate payors that continue to date.

37. According to Santee Cooper's 2009 Annual Report, in 2009, assets increased approximately \$362.9 million dollars from additions relating, in part, to the Chinese Power Plant acquisition.

38. On or about August 24, 2009, Santee Cooper issued a press release stating that its Board of Directors made a decision to “suspend efforts to permit” the proposed Chinese Power Plant.

39. In August 2009, Santee Cooper Chairman O.L. Thompson stated that Santee Cooper customers could benefit from the decision to suspend construction on the plant because “they may not need to bear the capital costs of constructing the proposed Pee Dee facility.”

40. On or about August 24, 2009, Santee Cooper issued a press release stating that its Board of Directors voted to consider a new two-year rate increase that would raise overall customer bills an average 4.4 percent beginning November 2009, and an additional 5.5 percent in November 2010. Upon information and belief, the Board of Directors did not approve the 2009 proposal that was considered.

41. Upon information and belief, on November 1, 2009, the residential rate was increased from 6.32 cents per KWH to 8.88 cents per KWH and added an additional 1.0 cent per KWH for the summer months. This rate increase against residential and other rate payers was not authorized by Santee Cooper, nor by statute, and was very much in excess of the increase being considered.

42. Upon information and belief, on or about April 23, 2010, Santee Cooper’s Board of Directors cancelled plans to construct the Pee Dee Plant even though Santee Cooper had already purchased the Chinese Power Plant that was delivered to South Carolina, purchased other assets, and incurred costs in an amount exceeding \$250 million.

43. The Pee Dee plant equipment, including the Chinese Power Plant, were subsequently reclassified as prepaid expenses and other current assets in Santee Cooper’s consolidated balance sheet without taking any impairment for depreciation or decrease in value.

This reclassification without any impairment artificially inflated the financial condition of Santee Cooper. Santee Cooper stated that it was confident certain assets are marketable and can be sold, even though they have not been sold to date.

44. According to the Santee Cooper 2012 Refunding Series C offering document, Santee Cooper applied the unspent bond proceeds for Pee Dee Unit 1 to “reduce borrowing on construction projects” instead of paying the balance back to reduce interest and principal due.

45. According to Santee Cooper 2012 Refunding Series C offering document, “unrecovered costs associated with Pee Dee Unit 1 will be recovered through customer rates.” The unrecovered costs include the purchase price for the Chinese Pee Dee plant, the engineering costs, the ongoing maintenance costs of the Chinese Power Plant, and other related costs. The rate payers have paid, and continue to pay, for and bear these costs.

46. On or about September 13, 2012, Santee Cooper issued a press release stating that its Board of Directors approved a two-year rate hike totaling a 7 percent increase.

47. After approval of the rate increase, Santee Cooper began to charge rates higher than those approved by law, and customers paid rates approximately 10 percent higher than previous rates.

48. This 10 percent rate hike was not presented or discussed at public hearings, as required by law.

49. To date, the Chinese Power Plant “kit” sits unassembled on property in Kingsburg, Florence County, South Carolina. The Pee Dee Plant property and equipment remains unused even though Santee Cooper decided to spend over \$362 Million to acquire it.

50. Upon information and belief, since acquisition, Santee Cooper has spent and continues to spend approximately \$13 Million per year for maintenance and security on the Pee Dee Plant.

51. Upon information and belief, Santee Cooper has spent and continues to spend approximately \$3.5 Million dollars annually to PPM, a subsidiary of EMCOR, and Worley Parsons to keep the equipment in working condition.

52. Upon information and belief, Santee Cooper had the opportunity to sell the unused Pee Dee Plant equipment for an amount lower than the purchase price, but did not do so. The ongoing failure to sell the Chinese power plant kit continues to cause damage to the rate payers and class members.

53. Upon information and belief, Santee Cooper approved financing of the Pee Dee Plant prior to ensuring all necessary permits would be issued.

54. Defendant failed to follow its own policies and procedures with regards to permitting prior to acquisition as had been followed on other purchases of similar equipment in the past.

55. Defendant failed to follow regulations promulgated by the State applicable to other energy producers addressing the acquisition of pre-construction permits prior to the acquisition of power plants.

56. Upon information and belief, the costs relating to the failed Pee Dee Plant were and continue to be passed on to Santee Cooper's customers causing continued damage to the rate payers.

57. Upon information and belief, Santee Cooper is continuing to charge customers illegal electricity rates causing continued damage to the rate payers.

FOR A FIRST CAUSE OF ACTION
(Breach of Duty)

58. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

59. Santee Cooper was charged with, and did affirmatively undertake the duty to provide low cost electricity to the Class and therefore had a duty to the Class to act in its best interests. "Best interests" includes taking into consideration the preservation of the financial integrity of the Public Service Authority and distributing electricity at just and reasonable rates.

60. Defendant breached its duty to the Class by committing the following acts, among others:

- a. Failing to obtain any required permits before expending funds on the purchase of the necessary equipment and construction of the Pee Dee Plant;
- b. Failing to adequately research and assess state and federal regulations and requirements with respect to facility permitting;
- c. Failing to adequately research and assess state and federal regulations and requirements with respect to ongoing compliance with federal and state emission standards;
- d. Purchasing a power plant kit from communist China that could not possibly have been granted all necessary Federal and State permits at the time it was purchased;
- e. Failing to adequately examine a cost-benefit analysis for incurring over \$800 million dollars in debt prior to the receipt of more than one necessary permit for construction;
- f. Failing to sell the Chinese Pee Dee Plant in a commercially reasonable manner and continuing to incur unnecessary costs;

- g. Failing to use leftover, unspent bond money earmarked for the Pee Dee Plant to repay the bond obligations to reduce interest and principal after voting to terminate the planned construction;
 - h. Failing to disclose to customers and the public that massive expenditures were already incurred prior to the suspension of the permitting of the Pee Dee Plant;
 - i. Making material misstatement of facts regarding the cost savings imputed to customers through the suspension of the Plant construction;
 - j. Requiring the acquisition and continuing costs of the project to be paid for through rate increases passed on to the Class due to Santee Cooper's breach of duty to its customers; and
 - k. Imposing rate increases higher than those lawfully approved.
61. Santee Cooper's breach of its duty proximately caused, and continues to cause, significant damages to its customers.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

62. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

63. Santee Cooper made an offer to Plaintiff Hearn (and the Plaintiff Class) to extend services based on certain rates permitted by statute.

64. Following notice and hearings regarding the proposed increase, Plaintiff Hearn (and the Plaintiff class) accepted the rate hike by continuing or subscribing to services in exchange for the adjusted rate.

65. This offer and acceptance constitutes a contract. Under the terms of this contract, Santee Cooper must comply with its own rate schedule. S.C. Code Ann. § 58-31-30(13) and 58-

31-360 limit the rates to those needed to “provide for payment of all expenses of the Public Service Authority, the conservation, maintenance, and operation of its facilities and properties, the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligation, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds, or other evidences of indebtedness or obligation[.]”

66. Defendant Santee Cooper breached the contract by:

- a. Failing to abide by the legally recognized contractual terms;
- b. Instituting an unauthorized rate increase; and
- c. Illegally overcharging Plaintiff Hearn and Plaintiff Class members for rates higher than those approved pursuant to statute.

67. Santee Cooper’s breach of contract proximately caused, and continues to cause, significant damages to its customers.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment/Injunctive Relief)

68. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

69. Plaintiff Hearn seeks declaratory judgment pursuant to South Carolina Code Ann. § 15-53-30 for the purposes of determining a question of actual controversy exists between the parties. This statute permits any party whose rights and interests have been affected by a statute to petition the Court to determine any question of construction or validity arising pursuant thereto.

70. Plaintiff Hearn seeks a declaration of rights under S.C. Code Ann. §§ 58-31-20, 58-31-30(13), 58-31-360, and such other sections as may be applicable to determine that Plaintiff Hearn is entitled to a declaration by the Court that:

- a. Defendant Santee Cooper illegally overcharged, and continues to illegally overcharge Plaintiff Hearn and those similarly situated for their services pursuant to an illegal rate hike,
- b. The amount of money which has been spent by Santee Cooper for the acquisition and maintenance of the Pee Dee Plant;
- c. The amount of the rate increases described above which has been devoted to the repayment of indebtedness associated with the acquisition and maintenance of the Pee Dee Plant; and
- d. To the extent customers have paid through rate increases, whether proper or improper, to satisfy any bond obligation which was utilized for the purpose of acquiring and maintenance of the Pee Dee Plant, and all such payments should be reimbursed to the customers of Santee Cooper.

71. Plaintiff Hearn seeks a declaration that the Pee Dee Plant is an asset which was purchased through rate increases paid for by the customers of Santee Cooper and it represents a surplus to Santee Cooper which should be liquidated and the proceeds distributed to its customers.

FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

72. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

73. Upon information and belief, in 2007 and/or 2008, Santee Cooper paid approximately \$249 million for a disassembled coal plant kit to be delivered to South Carolina from China.

74. Upon further information and belief, Santee Cooper has paid and continues to pay approximately \$13 million per year for maintenance and security on the Pee Dee Plant and an

additional \$3.5 million to keep the equipment in working condition despite the fact that it has long since decided that it will not proceed with assembly and operation of the facility.

75. In order to repay bond indebtedness which was incurred for the purpose of acquiring and assembling the Pee Dee Plant, Santee Cooper has imposed rate increases on its customers.

76. Through rate increases, Santee Cooper's customers have in essence paid for and continue to pay for an asset which Santee Cooper has no intention or hopes of operating.

77. Despite its decision to suspend and later to cancel construction and operation of the Pee Dee Plant, Santee Cooper has not rolled back the rate increases imposed on Plaintiff Hearn or the Class, in whole or in part.

78. Despite its decision to suspend and later to cancel construction and operation of the Pee Dee Plant, Santee Cooper has not sold the plant in order to recoup its investment, satisfy its debt obligation and roll back the rate increases imposed on the Plaintiff Hearn or the Class.

79. Santee Cooper has been and continues to be unjustly enriched by having purchased and maintained an energy production facility through the use of customer rate increases although the facility will apparently never be constructed and will be of no benefit to the rate paying customers whatsoever.

80. The class is entitled to and prays for a judgment against Santee Cooper in an amount equal to the purchase price and associated maintenance costs incurred through the acquisition and ownership of the Pee Dee Plant.

FOR A FIFTH CAUSE OF ACTION
(Money Had And Received)

81. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

82. The Plaintiff Hearn and the Class have continued to confer a benefit upon Defendant Santee Cooper by paying increased rates to pay for this useless Chinese Power Plant.

83. Defendant Santee Cooper received money from Plaintiff Hearn and the Class for a special purpose and the money has not been applied to the purpose even though the specific purpose has been abandoned and cannot be carried out.

84. Defendant Santee Cooper has continued to realize the benefit of the bond proceeds and increased rates from the Plaintiff Hearn and the Class since the decision to suspend and cancel construction.

85. Defendant Santee Cooper has improperly retained the benefits of these bond proceeds and increased rates paid by Plaintiff Hearn and the Class without repaying their value to Plaintiff Hearn and the Class.

FOR A SIXTH CAUSE OF ACTION
(Affirmative Injunctive Relief)

86. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

87. Although Santee Cooper has stated that the Chinese Pee Dee Plant is marketable, it has failed to sell the Plant since abandoning the project in 2010 and has not made commercially reasonable attempts to sell the assets in order to repay the bonds or the Class.

88. The Class has and continues to pay for the Chinese Pee Dee Plant and its ongoing maintenance that is causing an immediate and irreparable loss and damage to the Class.

89. There is no adequate remedy at law because the Court should order Santee Cooper to sell the Chinese Pee Dee Plant so the sale proceeds may be used by Santee Cooper to benefit its customers.

90. No harm is caused to Santee Cooper by ordering it to sell the non-performing asset so the balance of harm weighs in favor of the class.

91. The Class is likely to succeed on the merits as set forth above, and the sale is in the public interests as it will benefit the Class and mitigate damage to the Class.

92. The Class is entitled to and prays for an affirmative injunctive order against Santee Cooper to sell the Chinese Pee Dee Plant.

FOR A SEVENTH CAUSE OF ACTION
(Violation of Due Process – S.C. Const. Art. 1, § 3)

93. Plaintiff Hearn repeats and realleges each and every previous paragraph of the Complaint as though fully set forth herein.

94. Section 3 of Article 1 of the South Carolina Constitution provides that no citizen of this State may be deprived of their “life, liberty, or property without due process of law.”

95. By violating its own policies, procedures, and governing statutes when setting rates charged to its ratepayers, as set forth above, Defendant violated Plaintiff’s and the Class members’ right to due process of law under the South Carolina Constitution.

96. Plaintiff and the Class members were damaged by this violation of their right to due process guaranteed by the South Carolina Constitution by being charged excessive and illegal rates by Defendant.

97. Plaintiff and the Class members are entitled to the recovery of all money paid to Defendant as a result of the illegal rate increases.

WHEREFORE, Plaintiff Hearn prays the Court:

- A. Certify the matter as a class action pursuant to Rule 23, SCRCP; and
- B. Grant judgment in favor of the Class for their damages, attorney’s fees, and any other remedy to which they may be entitled; and

C. Grant such other and further relief as the Court deems just and proper.

s/ Matthew A. Nickles
RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC
Daniel S. Haltiwanger
Matthew A. Nickles
P.O. Box 1368
1730 Jackson Street
Barnwell, SC 29812
Telephone No. (803) 541-7850
Facsimile No. (803) 541-9625

HALL BOOTH SMITH, P.C.
Jack G. Gresh
Lauren Spears
40 Calhoun Street
Charleston, SC 29401
Telephone No. (843) 720-3460
Facsimile No. (843) 720-3458

SCHMUTZ & SCHMUTZ, P.A.
J. Stephen Schmutz
24 Broad Street
Charleston, SC 29401
Telephone No. (843) 577-5530
Facsimile No. (843) 577-9204

L. MORGAN MARTIN, P.A.
L. Morgan Martin
1121 3rd Avenue
Conway, SC 29526
Telephone No. (843) 484-0993
Facsimile No. (843) 248-2842

ATTORNEYS FOR THE PLAINTIFF

August 16, 2017

Barnwell, South Carolina