

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
	)	<b><u>BUSINESS COURT</u></b>
	)	
COUNTY OF HORRY	)	Civil Action No. 2017-CP-26-05256
	)	
George M. Hearn, Jr., on Behalf of Himself and	)	
All others Similarly Situated,	)	
	)	
Plaintiffs,	)	<b>PLAINTIFF'S MOTION AND</b>
	)	<b>SUPPORTING MEMORANDUM</b>
	)	<b>FOR CERTIFICATION OF A</b>
	)	<b>SETTLEMENT CLASS,</b>
	)	<b>PRELIMINARY APPROVAL OF</b>
	)	<b>CLASS ACTION SETTLEMENT,</b>
	)	<b>AND APPROVAL OF NOTICE</b>
	)	
v.	)	
	)	
South Carolina Public Service Authority d/b/a	)	
Santee Cooper,	)	
	)	
Defendant.	)	
	)	

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Plaintiff George M. Hearn, Jr., on behalf of himself and all others similarly situated (“Plaintiffs”), and by and through his undersigned counsel, hereby submits the following Motion and Supporting Memorandum for Certification of a Settlement Class, Preliminary Approval of Class Action Settlement, and Approval of Notice reflecting the agreement of the parties to resolve this putative class litigation.

#### **INTRODUCTION**

This case involves Plaintiff’s claims against Defendant South Carolina Public Service Authority (“Santee Cooper”) for, among other things, its violation of Santee Cooper’s policies and procedures following its purchase of a coal-fired electric generating plant (the “Pee Dee Plant”) in Florence County, South Carolina, its subsequent decision to abandon the plant, and Santee Cooper’s increase of Plaintiff’s electricity rates in order to fund the debt service incurred as a result of the Pee Dee Plant’s purchase. Filed as a class action, Plaintiff’s Complaint seeks certification

of a class (the “Class”) of “any current or former residential/commercial customer[s] of Santee Cooper who paid increased rates from November 2009 to present.” *See* Compl. ¶ 9 (filed Aug. 16, 2017).

Prior to the filing of this class action in August 2017, Plaintiff and his counsel extensively researched and investigated potential claims and participated in pre-suit mediation with Santee Cooper’s counsel before Tom Wills of Wills, Massalon & Allen. On August 16, 2017, following unsuccessful pre-suit mediation, the present action was filed asserting claims for breach of duty, breach of contract, declaratory judgment/injunctive relief, unjust enrichment, money had and received, affirmative injunctive relief, and violation of due process under Section 3 of Article 1 of the South Carolina Constitution. In lieu of answering, Santee Cooper filed a Motion to Dismiss and subsequently filed a supporting memorandum. After briefing and a hearing, this Court entered an Order denying Santee Cooper’s Motion to Dismiss. *See* Order Denying Santee Cooper’s Motion to Dismiss (Apr. 4, 2019).

Following the denial of Santee Cooper’s Motion to Dismiss, Santee Cooper filed its Answer and the parties began discovery. During the course of discovery, the Parties engaged in informal settlement discussions, eventually renewing their mediation efforts with Tom Wills on February 3, 2021. While the matter was not resolved on February 3, the parties made progress and continued settlement discussions with the assistance of Mr. Wills. Through those continued efforts, on March 18, 2021, the parties reached the settlement now before this Court. *See* Settlement Agreement attached hereto as Exhibit A.

Subject to the terms and conditions of the Settlement Agreement, and specifically reserving certain rights, Santee Cooper agrees to class certification for settlement purposes only, and to significant settlement benefits to the Plaintiff Class in a \$12.5 million common fund. Given the complexity of the legal issues presented, the likelihood of prolonged litigation (including

inevitable appeals), as well as uncertainties regarding both the merits of the litigation, the financial viability of Santee Cooper, and settlement funding provided for by an eroding insurance policy, Class counsel believe the benefits provided to the Class are fair, reasonable, and adequate, and at a minimum are within the range of acceptable results to support preliminary approval of the settlement.

Class counsel also believe that the notice provisions in the Settlement Agreement are consistent with the requirements of due process and are the best means to notify the Class regarding the proposed settlement.

Accordingly, Plaintiff moves this Court for entry of an Order: (1) certifying the above-captioned action as a class action for settlement purposes; (2) preliminarily approving the settlement embodied in the Settlement Agreement; (3) approving the distribution plan attached to the Settlement Agreement as Exhibit A; (4) approving the notice plan and forms of notice attached to the Settlement Agreement as Exhibit C; and (5) setting a date for a fairness hearing on final approval (“Final Approval Hearing”).

### **STANDARD**

Whether a class should be certified rests in the discretion of the trial court. *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009). The Supreme Court of South Carolina “has expressed the viewpoint that class actions are favored in this state[.]” *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010). Undergirding this sentiment is the rationale that “the class action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.” *Id.* (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)).

A party seeking class certification must demonstrate:

1) the class must be “so numerous that joinder of all members is impracticable;” 2) there must be “questions of law or fact common to the class;” 3) the “claims or defenses of the representative parties [must be] typical of the claims or defenses of the class;” 4) “the representative parties [must] fairly and adequately protect the interests of the class;” and 5) “the amount in controversy [must] exceed[] one hundred dollars for each member of the class.

*Gardner v. S.C. Dep’t of Revenue*, 353 S.C. 1, 20–21, 577 S.E.2d 190, 200 (2003) (alterations in original) (quoting Rule 23(a), SCRCF). “The first four criteria are often referred to as the requirements for numerosity, commonality, typicality, and adequacy of representation.” *Id.*

Rule 23(c) and Rule 23(d)(2), SCRCF, authorize the Court to approve a class action settlement and direct reasonable notice to the class. Judicial approval of a proposed settlement ensures that the rights of absent class members are adequately protected. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991);<sup>1</sup> *Clark v. Experian Info. Sols., Inc.*, 219 F.R.D. 375, 378 (D.S.C. 2003); *see also* Rule 23(c), SCRCF, advisory committee note (“It is necessary to protect the rights of all members of the class.”). The law favors class action settlements. *See, e.g., S.C. Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990).

In assessing a proposed class action settlement, courts focus on whether a settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). Courts generally bifurcate the process into two phases. During the preliminary approval phase, the inquiry before the court is whether the terms of the proposed settlement are “within the range of possible approval or . . . whether there is probable cause to notify the class of the proposed settlement.” *Horton v. Merrill Lynch, Pierce,*

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<sup>1</sup> Because the South Carolina Class Action Rule is consistent with, but more expansive than the federal class action rule, South Carolina courts often rely on federal precedent as a baseline in evaluating class action issues. *See Littlefield v. S.C. Forestry Comm’n*, 337 S.C. 348, 354-55, 523 S.E.2d 781, 784 (1999) (“Our state class action rule differs significantly from its federal counterpart. The drafters of [South Carolina] Rule 23 . . . intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B) . . . . By omitting the additional requirements, Rule 23, SCRCF, endorses a more expansive view of class action availability than its federal counterpart.”); *see also McGann v. Mungo*, 287 S.C. 561, 570, 340 S.E.2d 154, 159 (Ct. App. 1986) (relying on federal precedent to interpret new Rule 23, SCRCF).

*Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (quoting *Armstrong v. Bd. of Sch. Directors*, 616 F.2d 305, 314 & n.13 (7th Cir. 1980)) (internal citations omitted); *see also Central Wesleyan College v. W.R. Grace & Co.*, 143 F.R.D. 628, 647 (D.S.C. 1992) (order granting preliminary approval of a class action settlement serves only to allow the court to initiate proceedings to enable final adjudication of the appropriateness and fairness of the settlement).

Following preliminary approval, and prior to final approval, the court conducts a fairness hearing where class members may participate. In such a hearing, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Brunson v. Louisiana-Pacific Corp.*, 818 F. Supp. 2d 922, 927 (D.S.C. 2011) (quoting *Newberg & Conte, Newberg on Class Actions* § 11:41 (3d ed. 1992)).

Here, Plaintiff seeks an order certifying the proposed Class and for an order of preliminary approval of the proposed settlement. Thus, the two questions before the Court, and prior to class notice, are whether the proposed Class meets the certification requirements of Rule 23(a), SCRCF, and whether the proposed settlement is within the range of possible approval so that the Class should be notified of its terms.

## **ARGUMENT**

### **A. The Court Should Certify the Class for Settlement Purposes**

The proposed Class meets all elements for class certification. Made up of both current and former Santee Cooper customers, the Class is defined in the Settlement Agreement as “all residential and business retail customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 and February 28, 2021.” *See* Ex. A at ¶ 1.37.

As discussed below, class certification is warranted. Plaintiff has demonstrated each of the five prerequisites for class certification under Rule 23(a), SCRCPL, and Plaintiff respectfully requests this Court certify the above-captioned action as a class action for the purpose of settlement.

**1. The Class is so Numerous that Joinder of all Members is Impracticable**

The Class consists of many thousands of individuals and entities who are or were direct Santee Cooper customers during the class period. Thus, the Class is so numerous that joinder of all members is impracticable, thereby satisfying Rule 23(a)(1), SCRCPL. The disposition of the claims of the Class Members in a single class action will provide substantial benefits to the parties and to the Court.

**2. There are Questions of Law or Fact Common to the Class**

The commonality requirement of Rule 23 is not a stringent requirement. “When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all parties affected.” Newberg on Class Actions, § 3:20 (5th ed.). One common fact or issue is sufficient to satisfy this requirement, if important enough. *McCann v. Mungo*, 287 S.C. 561, 340 S.E. 2d 154, 158 (Ct. App. 1986) (“[A] single common issue will suffice if it is important enough.”). Thus, in demonstrating commonality, the moving party is not required to prove every issue in the case is common to each class member. *Gardner*, 353 S.C. at 21, 577 S.E.2d at 200. Instead, the proposed class must share a determinative issue. *Id.* Minor factual differences between class members should not thwart a motion for class certification where members’ claims are otherwise controlled by a dispositive question. *See id.* at 22, 577 S.E.2d at 201; Newberg, *supra*, § 3.20 (“Because not all questions need be common, the fact that class members must

individually demonstrate their right to recover, or that they may suffer varying degrees of injury, will not bar a finding of commonality.”).

The core facts of this case stem from a common origin—Santee Cooper’s purchase of the components of a coal-fired power plant to be constructed in Florence County, South Carolina and its subsequent decision to suspend construction of the plant. After purchasing and later deciding to suspend construction of the plant, Santee Cooper nevertheless began increasing customer rates to fund the debt service incurred as a result of the purchase. All proposed Class Members paid increased rates to fund the debt service incurred by Santee Cooper, which establishes the operative facts on which every Class Member’s case arises. For the entire Class, the questions of fact are the same: Whether that Class Member paid increased rates to Santee Cooper and whether those increases were attributable to Santee Cooper’s purchase of the plant that was never constructed. In turn, the legal questions arising out of this case are also the same for each proposed Class Member: 1) Santee Cooper’s liability for the alleged violations of the statutory, common law, and equitable causes of action alleged in Plaintiff’s Complaint; and 2) the actual damages to which the Class Member is entitled as a result. As a result, common issues of fact and law predominate such that class certification is appropriate.

### **3. The Representative Plaintiff’s Claims are Typical of the Class**

The tenets of commonality and typicality are often dealt with as one in terms of class certification. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (“The commonality and typicality requirements of Rule 23(a) tend to merge.”). “To establish the typicality requirement, the ‘claims or defenses of the representative parties [must be] typical of the claims or defenses of the class.’” *Pope v. Heritage Cmty., Inc.*, 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011) (alterations in original) (quoting Rule 23(a)(3)). Decisions construing Rule 23(a)(3) have given it a liberal construction, holding that a claim is typical if it arises from

the same events, practices, or course of conduct that gives rise to the claims of other class members, and if the claims are based on the same legal theories. *See* Newberg, *supra*, § 3:29 (collecting cases). Generally, “[w]here the class representatives’ claims are such that they will have to prove the same elements as the remainder of the class, then typicality should be found notwithstanding factual differences between various members of the class.” *Brown v. Cameron-Brown Co.*, 92 F.R.D. 32, 38 (E.D. Va. 1981).

Plaintiff’s claims are typical of the claims of Class Members, thereby satisfying Rule 23(a)(3), SCRCPP. Plaintiff’s claims arise from the same nucleus of operative facts and are intended to correct and prevent the same allegedly improper conduct that has impinged identically upon Plaintiff and Class Members. Specifically, the terms by which Plaintiff and Class Members receive service are the same or similar and convey the same or similar rights to each. The legal relationship between Plaintiff and Santee Cooper, by which power is sold and purchased, is the same or similar to the legal relationship between Santee Cooper and all of its other similarly situated customers.

Likewise, Santee Cooper’s defenses to Plaintiff’s and Class Members’ claims would be typical of one another and would amount to whether Santee Cooper increased Class Members’ electricity rates in violation of, among other things, Santee Cooper’s policies and procedures. Consequently, the fact of damage and the common course of conduct that caused the damage to each Class Member is the same, and the typicality requirement of Rule 23(a)(3) is met.

#### **4. The Representative Plaintiff will Fairly and Adequately Protect the Interests of the Class**

Rule 23(a)(4), SCRCPP, requires that the representative parties must “fairly and adequately protect the interests of the class.” Encompassed in this rule is the requirement that class counsel’s interests are not in conflict with the interests of members of the class. *Waller v. Seabrook Island*



*Prop. Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990). The Court must examine: “(1) whether class counsel are qualified, experienced, and generally able to conduct the proposed litigation; and (2) whether Plaintiff[’s] claims are sufficiently interrelated with and not antagonistic to the class claims as to ensure fair and adequate representation.” *Lott v. Westinghouse Savannah River Co.*, 200 F.R.D. 539, 561 (D.S.C. 2000). “The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class.” *Waller*, 300 S.C. at 468, 388 S.E.2d at 801. “For a conflict of interest to prevent plaintiffs from meeting the requirement of Rule 23(a), that conflict must be fundamental [and] go to the heart of the litigation.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430–31 (4th Cir. 2003) (internal quotation omitted).

Plaintiff will fairly and adequately protect the interests of the Class, thereby satisfying Rule 23(a)(4), SCRCF. While different members of the Class may have paid sums based upon differing formulas for the rate increases, these variations result in nothing more than differing amounts of damages. Differing damages do not change the nature of the claims against Santee Cooper. Mere formulaic application of different percentages will provide the amounts of appropriate relief to Class Members. What is important is that Plaintiff’s interests are coincident with and not antagonistic to the interests of the Class Members, and that Plaintiff is represented by experienced and able counsel who have previously litigated class actions.

Plaintiff’s interests here are clearly not antagonistic to those asserted on behalf of the Class. The Plaintiff filed this action for reimbursement of money paid to Santee Cooper after it increased rates to finance and maintain the coal-fired power plant that was purchased, but never built. Plaintiff’s claims are coextensive with those of all remaining Class Members.

Moreover, Plaintiff's counsel has extensive experience in class actions and other complex litigation and are well-suited to prosecute the claims. Plaintiff's counsel have a successful history in bringing and successfully concluding class action litigation. Class counsel and the Plaintiff share the same interests as Class Members in maximizing relief for the Class, and this Court should therefore find the proposed representation is in the best interest of the Class.

#### **5. The Amount in Controversy Requirement of Rule 23(a)(5) is Satisfied**

The final prong of Rule 23, SCRCR, requires that each class member have a claim in excess of \$100.00. For the purpose of settlement only, Santee Cooper does not contest this element and has agreed to certification of the proposed Class in the Parties' signed Settlement Agreement. *See* Ex. A at ¶ 2.01.

#### **B. Preliminary Approval of the Proposed Settlement is Appropriate Because the Terms of the Proposed Settlement are Fair and Provide Adequate Consideration to the Class**

In general, the factors a court must consider in determining whether a class action settlement is adequate at the preliminary approval stage include the fairness of the settlement terms and the adequacy of the proposed relief. With regard to fairness, the court should consider the posture of the case at the time of the proposed settlement, the extent of the discovery, the circumstances surrounding the settlement negotiations, and the experience of counsel in litigating class actions. *Jiffy Lube*, 927 F.2d at 158-59; *Horton*, 855 F. Supp. at 828. With regard to adequacy, the court should consider the strength of the plaintiffs' case on the merits relative to the difficulties of proof and strength of the defenses, the duration and expense associated with additional litigation, the solvency of the defendants and probability of recovery in continued litigation, and the degree of opposition to the proposed settlement. *Jiffy Lube*, 927 F.2d at 159; *Horton*, 855 F. Supp. at 828-29. These factors support preliminary approval here.

## 1. Fairness

### a. Posture of the Case and Settlement

This case was filed in August 2017 as a result of rate increases initiated, and passed on to the Class, by Santee Cooper to finance the purchase and maintenance of a coal-fired power plant that was planned for but never constructed in Florence County, South Carolina. In lieu of an answer, Santee Cooper filed a motion to dismiss under Rule 12(b)(6), SCRCPP. Santee Cooper's motion sought dismissal on various grounds including expiration of the statute of limitations, failure to state a claim, and the filed rate doctrine. The Court ultimately denied the motion following briefing and oral argument.

After Santee Cooper's motion was denied, Santee Cooper answered the Complaint and discovery began. In the course of discovery Plaintiff engaged an expert to provide insight into regulated and deregulated energy markets. In January 2021 the Parties agreed to mediation with Tom Wills and on February 3, 2021, the Parties conducted a virtual mediation. While that mediation did not result in settlement, the Parties continued negotiations with the help of Mr. Wills. During this period, Plaintiff gained additional insight into Santee Cooper's financial position and the limited amount of insurance available to fund a settlement. With a greater understanding of Santee Cooper's financial position, Plaintiff continued negotiations with Santee Cooper and ultimately came to terms that are embodied in the Settlement Agreement.

### b. Experience of Counsel

Class counsel include some of the most experienced lawyers in class action litigation in the state and nation. Likewise, defense counsel hail from a premier local law firm with a national presence. There can be no legitimate question that counsel in the case have the requisite level of experience to evaluate the strengths and weaknesses of the matter, and knowledgeably support preliminary approval.

## 2. Adequacy

In assessing whether a proposed settlement adequately compensates the class, the Court must consider the strength of the case, the strength of the defenses, the practical implications of continued discovery and trial, and whether a recovery is likely in the event of continued litigation, among other factors. *See Newberg, supra*, § 13:15 (5th ed.) “Standard for Granting Preliminary Approval – Substantive Requirements.” While the Court will also consider these factors at the Final Approval Hearing, the weighting of these factors at this time demonstrates that the proposed settlement is adequate for preliminary approval purposes (that the proposed settlement falls within the range of possible approval).

First, the strength of Plaintiff’s case, balanced against the assured compensation under the proposed Settlement Agreement, weighs in favor of the adequacy of the compromise. Plaintiff’s ability to prevail on the merits of this litigation, like all contested matters, is uncertain. The proposed Settlement Agreement, however, confers relief that might not be achievable if the case were to continue.

Second, there is no real debate that this litigation, if not resolved by the proposed Settlement Agreement, would continue at great expense and delay for the Class. As proposed, the Class relief is funded by an insurance policy which also served as the source of payment for Santee Cooper’s legal counsel. Informed that the policy was what is known as an “eroding limits” policy, Class Counsel took advantage of the opportunity to resolve the matter before the limits were depleted through continued litigation.

Third, the settlement produces a substantial benefit for the Class without risking the financial health of Santee Cooper in the face of continued litigation. Santee Cooper recently settled litigation arising from Santee Cooper’s efforts to construct two nuclear generation units (*Cook v. Santee Cooper, et al.*). Pursuant to that settlement, Santee Cooper agreed to pay \$200 million (in

addition to \$320 million paid by its codefendant) and to freeze customer rates through 2024. Class counsel and Santee Cooper's counsel worked together to arrive at the \$12.5 million settlement fund, which provides for recovery to all Class Members, delivers the benefits to the Class promptly, avoids the uncertainty of continued litigation, and does not impinge on Santee Cooper's ability to continue to serve its existing customers and perform its obligations pursuant to the recent *Cook* settlement..

Accordingly, on the basis of their extensive investigation and analysis, as well as their decades of experience in class action litigation, Class counsel believe the settlement to fall well within the range of possible acceptable resolutions of this action.

**C. The Notice and Notice Plan Affords the Best Practicable Notice to the Class**

To proceed to the Final Approval Hearing, notice of the proposed settlement must be given to the Class in such manner as the Court directs. *See* Rule 23(c), SCRCF. To protect the rights of the Class, the notice and notice plan should be the best practicable under the circumstances, “[B]est notice practicable” means “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). There is, however, no requirement that every Class Member receive actual notice, only those identifiable through reasonable efforts. *Id.* at 175-76.

The Notice Plan set forth in the Settlement Agreement, and the long-form and summary notices attached thereto as Exhibits 1 and 3, have been developed to provide the most comprehensive notice possible, with a reach that satisfies constitutional due process. The proposed notices provide clear and accurate information as to: (1) the nature and principal terms of the settlement; (2) the procedures and deadlines for requesting exclusion from the settlement or submitting objections; (3) the consequences of taking or foregoing the various options available to the Class; (4) the date, time, and place of the Final Approval Hearing, as set by this Court; (5) the

maximum amount of attorney's fees and costs and the maximum Class Representative Incentive Award that may be sought by Class counsel;<sup>2</sup> and (6) the identities and contact information for counsel and the Court.

The proposed procedures for notice set forth in the Settlement Agreement, and as outlined herein, constitute the best practicable notice to the Class:

1. For purposes of Class Notice and participation in the Settlement, Class Members eligible for distribution from the Settlement Benefit are determined as of February 28, 2021. Santee Cooper has provided to Class Counsel and the Settlement Administrator information sufficient for the Settlement Administrator to distribute notice to the Settlement Class, including customer names, service addresses, billing addresses (if different), email addresses (if available), account identification numbers, and the identification of Inactive Accounts of all Settlement Class Members who were Santee Cooper residential and/or business retail customers between November 1, 2009 through February 28, 2021 (the "Settlement Class List").
2. The Settlement Administrator shall prepare, print, and mail and/or email the Summary Class Notice to all Class Members on the Settlement Class List, as directed and approved by the Court in its Preliminary Approval Order. The Settlement Administrator shall discharge its responsibility by emailing the Notice to each Class Member for which an email address is available and mailing the Notice via United States Postal Service ("USPS") first-class mail to

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<sup>2</sup> Class counsel will file their motion for attorneys' fees and costs and Class Representative Incentive Award no later than twenty-one (21) days in advance of the Final Approval Hearing.

- each Class Member for which an email address is not available no later than [35 days after Preliminary Approval Date].
3. Beginning no later than [35 days after Preliminary Approval Date], the Settlement Administrator shall cause the Settlement Class Publication Notice to be published in a weekday (Monday through Friday) edition of the *Columbia State, Greenville News, Charleston Post & Courier, Aiken Standard, Beaufort Gazette / Bluffton Island Packet, Rock Hill Herald, and Myrtle Beach Sun News* as an approximately 1/4 page ad unit.
  4. No later than [35 days after Preliminary Approval Date], the Settlement Administrator shall establish a settlement website to which Class Members will be directed in the Class Notice and on which relevant documents and information will be posted.
  5. No later than [35 days after Preliminary Approval Date], the Settlement Administrator shall establish a toll-free line to which Settlement Class Members will be directed in the Notice and on which relevant information may be obtained or shared by Settlement Class Members
  6. The Class Notice provides information concerning the Settlement, including how and when Class Members will receive benefits of the Settlement. As reflected in the Distribution Plan, Class Members who have an active account with Santee Cooper will be provided a billing credit, unless they are entitled to receive \$200 or more, in which case they will receive a check. Class Members who do not have an active account with Santee Cooper will receive a check. The Settlement Agreement also details the Class Members' rights to request exclusion from or object to the settlement.

7. Any mailed Class Notice returned to the Settlement Administrator as non-delivered shall be sent to the forwarding address affixed thereto via USPS first-class mail. If no forwarding address is provided, the Settlement Administrator shall undertake additional public record research using Accurint, a third-party lookup service maintained by LexisNexis. If an alternative address is located, the Notice shall be sent to such address via USPS first-class mail.
8. For any email Notice for which a “bounce code” is received indicating that the message was undeliverable after three attempts and a valid physical mailing address exists, a Notice will be sent via USPS first-class mail.

**D. A Final Approval Hearing is Appropriate**

In conjunction with its order preliminarily approving the settlement and authorizing the Class Notice to be issued, the Court should schedule a Final Approval Hearing to consider all required information to determine whether the settlement should be finally approved. *See Manual for Complex Litigation, Fourth* § 21.633 (2009). The Final Approval Hearing will provide a forum for proponents and opponents to explain, describe, or challenge the terms and conditions of the settlement, including the settlement’s fairness, adequacy, and reasonableness. To allow time for the Notice to be issued, responses to be received, and final briefing, the parties request that the Court schedule the Final Approval Hearing for a date no earlier than sixty (60) days after the Date of Notice and as detailed in the Settlement Agreement. *See* Ex. A at ¶ 1.16.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order certifying the above-captioned action as a class action for settlement purposes; preliminarily approving the settlement embodied in the Settlement Agreement; approving the distribution plan attached to the Settlement Agreement as Exhibit A; approving the notice plan and forms of notice



attached to the Settlement Agreement as Exhibit C; and setting a date for a Final Approval Hearing.  
A Proposed Order is attached to this Motion as Exhibit B.

Respectfully Submitted,

Dated: June 7, 2021

*s/Daniel S. Haltiwanger*

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ATTORNEYS FOR PLAINTIFFS

**EXHIBIT A**

**TO THE MOTION FOR  
PRELIMINARY APPROVAL**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
George M. Hearn Jr., on behalf of	)	Civil Action No. 2017-CP-26-5256
himself and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b><u>SETTLEMENT AGREEMENT</u></b>
	)	<b><u>AND RELEASE</u></b>
South Carolina Public Service Authority	)	
d/b/a Santee Cooper,	)	
	)	
Defendant.	)	
_____	)	

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Execution Date, between Plaintiff George M. Hearn, Jr. (“Plaintiff”), on his behalf and on behalf of the Settlement Class, as defined herein, and Defendant South Carolina Public Service Authority (“Defendant” or “Santee Cooper”). Subject to the approval of the Court and the terms and conditions expressly provided herein, this Agreement is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all Released Claims.

**RECITALS<sup>1</sup>**

WHEREAS, Plaintiff alleges, among other things, that residential and business retail customers of Santee Cooper paid increased and improper utility rates for amounts related to the permitting and construction of two coal-fired units at the Pee Dee Energy Campus (the “Pee Dee Project”);

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<sup>1</sup> Capitalized terms used in these Recitals and throughout the Settlement Agreement shall have the meanings set forth in Section I of the Settlement Agreement unless defined in the Recitals or elsewhere in the Settlement Agreement. The definition of a capitalized term in the singular applies to the plural form of the capitalized term, and vice versa.

WHEREAS, on August 27, 2015, Plaintiff, through counsel, provided to Santee Cooper a courtesy copy of a draft class action complaint Plaintiff intended to file on or before September 11, 2015, in the Horry County Court of Common Pleas, on behalf of himself and a putative class of Santee Cooper's residential and business retail customers, asserting claims related to Santee Cooper's planned construction of a coal-fired generating station in Florence County, South Carolina and Santee Cooper's rates and charges related to the same;

WHEREAS, on September 10, 2015, counsel for the Parties executed a tolling agreement setting the terms and conditions for tolling applicable statute(s) of limitations, with an effective date of August 28, 2015, and the tolling agreement was extended on several occasions;

WHEREAS, on August 16, 2017, Plaintiff filed a class action complaint in South Carolina State Court, Horry County, captioned George M. Hearn, Jr., on Behalf of Himself and All Others Similarly Situated v. South Carolina Public Service Authority, Civil Action No. 2017-CP-26-5256 (the "Action"), on behalf of himself and a putative class of Santee Cooper's residential and business retail customers;

WHEREAS, by order entered April 10, 2018, the Action was assigned to the Business Court Pilot Program for Horry County and assigned to Judge Dianne Goodstein;

WHEREAS, on February 3, 2021, the Parties mediated the Action before Tom Wills, continued negotiations thereafter, and agreed to resolve the matter as set forth in a communication from the mediator dated February 25, 2021;

WHEREAS, Defendant denied and continues to deny the material allegations in the Action, denied and continues to deny any wrongdoing and any liability to Plaintiff or any Class Member, in any amount, in connection with the claims asserted in the Action, denied class certification is required or appropriate, and contends it would prevail in the Action;

WHEREAS, before and during the litigation of this Action and during negotiation of the Settlement provided for in this Agreement, Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in this Settlement and how to best serve the interests of the putative class in the Action;

WHEREAS, Plaintiff, individually and on behalf of the Settlement Class, and Class Counsel desire to settle all claims against Defendant, having engaged in litigation, motions practice, discovery, and mediation, and recognizing the risks, delay, and difficulties involved in establishing liability, the defenses to the claims, the likelihood of recovering more than offered by the Settlement, and the likelihood of the Action being protracted and expensive. Based on their evaluation of these factors, Plaintiff and Class Counsel determined Settlement is in the best interests of the Settlement Class;

WHEREAS, although Defendant denies any wrongdoing and any liability to Plaintiff and the Settlement Class and asserted numerous defenses, including that its actions were and are in compliance with state and federal law, Defendant believes it is in its best interests to settle the Action in the manner and upon the terms and conditions provided for in this Settlement Agreement in order to avoid the further expense, inconvenience, and distraction of litigation, and in order to put to rest the claims resolved by the Settlement;

WHEREAS, on March 18, 2021, the Parties, through counsel, executed a Settlement Term Sheet setting forth the material terms of the settlement;

WHEREAS, after having had a full and fair opportunity to evaluate their respective positions, the Parties agree on all terms and conditions of this Settlement Agreement, reached through arms-length negotiations between their respective counsel;

WHEREAS, the Parties agree the fact of this Agreement, any of the terms in this Agreement, any documents filed in support of this Agreement, or any statement made in the negotiation thereof shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law, (ii) any liability or wrongdoing, (iii) liability on any claims or allegations in the Action, or (iv) the propriety of certifying a litigation class in any proceeding, and shall not be used by any Person for any purpose whatsoever in the Action or any other legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Plaintiff, individually and as representative of the Settlement Class, and Defendant agree the Action and claims described in the Release shall be fully and finally compromised, settled, and released and the Action shall be dismissed with prejudice, subject to the approval by the Court of the Settlement.

#### **I. DEFINITIONS**

In addition to the terms defined above, the following terms are used in this Settlement Agreement:

1.01. “Account” means the Customer account of the Plaintiff and Class Members with Defendant, under which the Plaintiff and Class Members are billed for electric service by Defendant.

1.02. “Active Account” means an Account that is open.

1.03. “Attorney Fee/Litigation Cost Award” means the award, if any, made to Class Counsel by the Court upon application pursuant to paragraph 6.01, for their attorneys’ fees and for

the reasonable costs and expenses incurred on behalf of the Representative Plaintiff and the Class in the litigation of this action.

1.04. “Class Counsel” means, Daniel S. Haltiwanger, William C. Lewis, and Brady R. Thomas of Richardson, Thomas, Haltiwanger, Moore & Lewis, LLC; Matthew A. Nickles of Rogers, Patrick, Westbrook & Brickman, LLC; Jack G. Gresh and Lauren S. Gresh of Hall Booth Smith, P.C.; and L. Morgan Martin of L. Morgan Martin, P.A.

1.05. “Class Member” means a Person who meets the definition of the Settlement Class and who is not a Successful Opt-Out.

1.06. “Class Period” means November 1, 2009 through February 28, 2021.

1.07. “Court” means the Circuit Court of Horry County, South Carolina and such judge of the same court or other South Carolina state court to whom the Action is or may hereafter be assigned.

1.08. “Customer” means a Person who, according to Santee Cooper’s records, is identified as the holder of an Account with Defendant.

1.09. “Date of Notice” means the day on which Summary Class Notice to the Settlement Class is mailed or e-mailed as provided for in the Notice Plan.

1.10. “Day(s)” has the meaning ascribed to it in Rule 6, South Carolina Rules of Civil Procedure, and all time periods specified in this Agreement shall be computed in a manner consistent with Rule 6, SCRPC.

1.11. “Defendant’s Counsel” means A. Mattison Bogan, B. Rush Smith III, and Carmen H. Thomas of Nelson Mullins Riley & Scarborough LLP.

1.12. “Distribution Plan” means the plan for allocating the Settlement Benefit whereby the Settlement Benefit shall be distributed to Class Members, to be approved by the Court in the form attached as Exhibit A, which is made part of this Agreement.

1.13. “Effective Date” means the first date by which all of the following events and conditions occur:

a. Defendant no longer has any right to terminate this Agreement and there is no possibility of termination of this Agreement, under paragraph 7.12, or, if the Defendant does have such right, Defendant has given written notice to Class Counsel that it will not exercise such right.

b. The Court has finally approved the Settlement in a manner substantially consistent with the terms and intent of this Settlement Agreement following Notice to the Settlement Class and a hearing, and has entered the Final Approval Order in the Action;

c. The Released Claims are dismissed with prejudice pursuant to the Final Approval Order; and

d. Either: (i) thirty (30) Days have passed after the Final Approval Date and no appeal is taken as to the Final Approval Order and no motion or other pleading has been filed with the Court to set aside or in any way alter the judgment or orders of the Court finally approving of the Settlement or toll the time for appeal of such orders, or (ii) all appeals, reconsideration, rehearing, or other forms of review and potential review of the Court’s orders and judgment finally approving the settlement of the Action are exhausted, and the Court’s orders and judgment are upheld, without substantial alteration of the terms of this Agreement.



1.14. “Exclusion Deadline” means the deadline for requesting exclusion from the Settlement Class, as set forth in the Notice to the Settlement Class, and which shall be no later than forty-five (45) Days after the Date of Notice.

1.15. “Execution Date” means the latest date associated with a signature on a fully executed Agreement set forth on the signature pages below.

1.16. “Final Approval Hearing” means the final hearing, held after the Preliminary Approval Order is issued and the Settlement Class has been given notice and an opportunity to object to or exclude themselves from the Settlement, in which the Court will determine whether this Settlement should be approved as fair, reasonable, and adequate; whether the proposed Final Approval Order and judgment should be entered; and whether Class Counsel’s application for an Attorney Fee/Litigation Cost Award should be approved. The Final Approval Hearing shall be held at a time provided by the Court but no earlier than sixty (60) Days after the Date of Notice.

1.17. “Final Approval Order” means the order and judgment, substantially in the form attached as Exhibit B, approving the Settlement in a manner substantially consistent with the terms and intent of this Settlement Agreement and dismissing all claims in the Action with prejudice.

1.18. “Final Approval Date” means the date on which the order or orders constituting Final Approval are entered by the Court.

1.19. “Inactive Account” means an Account that is closed.

1.20. “Incentive Award” means the amount awarded, if any, by the Court to the Representative Plaintiff upon application as described in paragraph 6.01 of this Agreement.

1.21. “Notice” means, collectively, the Summary Class Notice, which shall be mailed or e-mailed to the Settlement Class; Publication Notice, which shall be published in a weekday circulation; and the Detailed Notice, which shall be posted on a unique website for the Action, as

further detailed in the Notice Plan and, subject to Court approval, shall be substantially in the forms attached to the Notice Plan as Exhibits 1 through 3.

1.22. “Notice Plan” means the plan outlining the proposed form, method, and schedule for dissemination of Notice to the Settlement Class. The proposed Notice Plan is attached as Exhibit C.

1.23. “Objection Deadline” means the deadline for submitting an objection to the Settlement or any relief in connection with the Settlement, as set forth in the Notice to the Settlement Class, and which shall be no later than forty-five (45) Days after the Date of Notice.

1.24. “Party” means the Representative Plaintiff, or Defendant individually, and “Parties” means Representative Plaintiff and Defendant collectively.

1.25. “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives, or assignees of any of the foregoing.

1.26. “Preliminary Approval” or “Preliminary Approval Order” means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement, including all exhibits, as contemplated by this Agreement and substantially in the form attached as Exhibit D.

1.27. “Preliminary Approval Date” means the date on which the order or orders constituting Preliminary Approval are entered by the Court.

1.28. “Release” means the release set forth in Section V of this Agreement.

1.29. “Releasees” means Defendant and its past, present, and future parent entities, predecessors, successors, assigns, officers, directors, attorneys and legal representatives, insurers, vendors, agents (alleged or actual), representatives, employees, heirs, executors, affiliates, administrators, successors, and related and affiliated Persons.

1.30. “Released Claims” means any and all past, present, and future claims, cross-claims, counterclaims, lawsuits, appeals, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, all from the beginning of the world until the Effective Date, under the laws of any jurisdiction (“Claims”), which Releasers (or any of them) whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising out of or relating in any way to the Pee Dee Project, including but not limited to the recovery of costs and related debt service through rates or charges to customers; any act or omission of the Releasees arising out of, relating to, or in any way regarding the Pee Dee Project, the adoption and implementation of rates during the Class Period, or other facts that were or could have been alleged in the Action; Santee Cooper’s rates and charges, including but not limited to those charged to customers to recover the costs of the Pee Dee Project and related debt service, Class Members’ payment of such rates and charges, and any act or omission of the Releasees related thereto; or any act or omission of Releasees that was or could have been alleged in this or another action directly, representatively, derivatively, or in any

other capacity in another court, tribunal, or other forum regarding the Pee Dee Project and related debt service, rates, or charges.

1.31. “Releasors” means the Representative Plaintiff and each Class Member, individually or together, and all those who claim through them or who assert claims (or could assert claims) on their behalf, including their respective heirs, executors, administrators, successors, beneficiaries, representatives, attorneys, agents, partners, assigns, co-obligors, co-guarantors, guarantors, sureties, and bankruptcy trustees on behalf of creditors or estates of the Releasors.

1.32. “Representative Plaintiff” or “Plaintiff” means George M. Hearn, Jr.

1.33. “Settlement” means the proposed settlement of the Action under the terms and conditions of this Agreement.

1.34. “Settlement Administration Costs” means the costs of administering the Settlement, including but not limited to the costs of mailing Notice to the Settlement Class and providing the Settlement Benefit to Class Members.

1.35. “Settlement Administrator” means RG/2 Claims Administration.

1.36. “Settlement Benefit” means the total Settlement value to be paid by Santee Cooper, equal to (a) twelve million five hundred thousand dollars (\$12,500,000.00), representing the sum of benefits to be distributed to Class Members in cash or Account credit, (b) the Attorney Fee/Litigation Cost Award, (c) Incentive Award, (d) Settlement Administration Costs, and (e) any other costs, fees, or awards related to this Settlement.

1.37. “Settlement Class” or “Class” means all residential and business retail customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 and February 28, 2021.

1.38. “Settlement Class List” means a list of all persons in the Settlement Class that is created by Defendant using information obtainable from its internal account and customer database.

1.39. “Successful Opt-Out” means any Person within the Settlement Class who has timely and validly exercised his or her right to be excluded from the Settlement Class pursuant to the procedures set forth herein, but shall not include (i) Persons whose requests for exclusion are disputed by Defendant pursuant to paragraphs 7.05 or 7.06, unless the dispute is overruled by the Court or withdrawn by Defendant; (ii) Persons whose communication is not treated as a request for exclusion; and (iii) Persons whose requests for exclusion are void or invalid.

## II. SETTLEMENT PROCEDURES

2.01. **Class Certification.** Solely for purposes of the Settlement and for no other purpose, and without waiving the provisions set forth in paragraph 10.03, Defendant stipulates and agrees to: (i) certification of the Action as a class action pursuant to Rule 23, South Carolina Rules of Civil Procedure; (ii) certification of Representative Plaintiff as class representative for the Settlement Class; and (iii) appointment of Class Counsel for the Settlement Class.

2.02. **Preliminary Approval.** As soon as practical, Class Counsel shall submit a motion for Preliminary Approval (“Motion for Preliminary Approval”) to the Court seeking entry of a Preliminary Approval Order, substantially in the form attached as Exhibit D. The Motion for Preliminary Approval shall attach this Agreement, including all exhibits, and shall, among other things, seek preliminary approval of the Settlement as memorialized in this Agreement, approval of the Notice Plan and Distribution Plan, and the setting of deadlines and other conditions consistent with this Agreement. The text of the Motion for Preliminary Approval (including the proposed Preliminary Approval Order, Notice Plan, and Distribution Plan), shall be provided to

Defendant for review no later than five (5) Days prior to filing the Motion for Preliminary Approval, and Defendant will have an opportunity to comment on the contents before filing. Defendant agrees not to oppose entry of the Preliminary Approval Order, to the extent it is consistent with the terms of this Agreement. Defendant's agreement not to oppose entry of the Preliminary Approval Order, however, shall not be an admission or concession by Defendant that a class was appropriate in the Action or would be appropriate in any other matter. In the event the Preliminary Approval Order is not entered, and the Settlement is terminated pursuant to paragraph 7.12, Defendant reserves the right to contest class certification and Plaintiff stipulates that nothing in this Agreement precludes such contest.

2.03. **Proposed Form of Notice.** As part of the Motion for Preliminary Approval, Class Counsel shall submit the Notice Plan to the Court for approval. This Notice Plan shall attach the proposed Notices to the Settlement Class and ask the Court to find that the proposed form, content, and method for dissemination of Notice constitute valid, due, and sufficient notice to the Class Members and comply fully with the requirements of the South Carolina Rules of Civil Procedure.

2.04. **Appointment of Settlement Administrator.** As part of the Motion for Preliminary Approval, Class Counsel shall seek appointment of a Settlement Administrator, as defined in paragraph 1.35, to be approved by the Court. The Settlement Administrator shall, upon approval of the Court, administer the Settlement, including but not limited to the process of calculating the benefit amount for each Class Member, under Class Counsel's supervision, and subject to the Court's jurisdiction.

2.05. **Settlement Class List; Allocation Information; Initial Identification of Active and Inactive Accounts.** Since the execution of the Settlement Term Sheet, Santee Cooper has provided to Class Counsel information sufficient for Class Counsel or the Settlement

Administrator to distribute Notice to the Settlement Class, along with information necessary to initiate efforts to determine the allocation of benefits to the Settlement Class. The information provided by Santee Cooper includes Customer names, service and billing addresses, e-mail addresses (where available), account identification numbers, and information regarding apportionment of the Settlement Benefit among the Settlement Class, as well as the initial identification of Active and Inactive Accounts.

2.06. **Final Approval.** No later than twenty-one (21) Days prior to the date set by the Court for the Final Approval Hearing, Class Counsel shall submit a motion for final approval of the Settlement (“Motion for Final Approval”). The Motion for Final Approval (including the proposed Final Approval Order and supporting papers) shall be provided to Defendant for review no later than five (5) Days prior to its filing, and Defendant shall file its response, if any, seven (7) Days before the Final Approval Hearing. Class Counsel shall seek entry of a Final Approval Order in the Action:

- a. finding that the Court has personal jurisdiction over the Plaintiff and all Class Members and subject matter jurisdiction to approve the Settlement;
- b. fully and finally approving the Settlement as fair, reasonable, and adequate, and directing its consummation pursuant to its terms and conditions;
- c. declaring this Agreement, the Final Approval Order, and the judgment of the Court to be binding on and to 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 Releasers;
- d. finding that the notice given to Class Members constituted the best notice practicable; was reasonably calculated under the circumstances to apprise Class Members of the

pendency of the action, the nature and terms of the proposed Settlement, their right to opt out or object, their right to appear at the Final Approval Hearing, and their right to seek relief; constituted reasonable, due, adequate and sufficient notice to all Persons entitled to notice; and complies in all respects with the requirements of Rule 23 of the South Carolina Rules of Civil Procedure, due process, and any other applicable law;

e. finding that Class Members' interests were adequately represented by the Representative Plaintiff and Class Counsel;

f. directing that all claims in the Action be dismissed with prejudice and, except as otherwise explicitly provided in the Agreement, without costs;

g. discharging and releasing the Releasees from all Released Claims;

h. permanently barring and enjoining the institution and prosecution of Released Claims by Releasers;

i. approving the Opt-Out List and determining that the Opt-Out List is a complete list of all persons who have timely and validly requested exclusion from the Class, who shall neither share in nor be bound by the Final Approval Order;

j. determining that the Agreement, Settlement, and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of any admission or concession of liability or any wrongdoing by Defendant or any Releasee;

k. reserving continuing and exclusive jurisdiction over the Settlement; and

l. containing such further provisions consistent with the terms of this Agreement to which the Parties consent in writing.

**2.07. Entry of Final Approval Order.** Defendant agrees not to oppose entry of the Final Approval Order, to the extent it is consistent with the terms of this Agreement. Defendant's



agreement not to oppose entry of the Final Approval Order shall not be an admission or concession by Defendant that a class was appropriate in the Action or would be appropriate in any other matter. In the event the Final Approval Order is not entered, and the Settlement is terminated pursuant to paragraph 7.12, Defendant reserves the right to contest class certification and Plaintiff stipulates nothing in this Agreement precludes such contest.

### **III. SETTLEMENT BENEFIT**

3.01. **Payment of Settlement Benefit.** No later than seven (7) Days after the Effective Date, Santee Cooper shall pay or cause to be paid to the Settlement Administrator the sum of twelve million five hundred thousand dollars (\$12,500,000.00).

3.02. **Total Settlement Consideration.** The Parties agree the Settlement Benefit is offered as Defendant's consideration for this Settlement and as full satisfaction of the Released Claims. The consideration set forth in paragraph 3.01 is an "all in" amount that includes, without limitation, all monetary benefits and distributions to the Class Members, attorneys' fees and expenses, escrow fees, taxes, tax expenses, pre and post-judgment interest, and all other costs and expenses relating to the Settlement (including, but not limited to, administration costs and expenses, notice costs and expenses, and settlement costs and expenses). Under no circumstances will Santee Cooper be required to pay more than the Settlement Benefit set forth herein.

3.03. **Continuing Jurisdiction Pending Disbursement.** The Settlement Benefit will remain subject to the jurisdiction of the Court, until such time as it is fully distributed in compliance with the Agreement and Distribution Plan and any applicable Court order.

3.04. **Taxes.** The Parties and the Settlement Administrator agree to treat the Settlement Benefit as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Settlement Administrator shall timely make such elections as necessary or

advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

a. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Settlement Administrator. The Settlement Administrator shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Settlement Benefit, and (iii) timely and properly filing applicable federal, state, and local tax returns necessary or advisable with respect to the Settlement Benefit (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in paragraph 3.04.b. below on the income earned by the Settlement Benefit shall be paid out of the Settlement Benefit.

b. The following shall be paid out of the Settlement Benefit: (i) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Benefit, including, without limitation, any taxes or tax detriments that may be imposed upon Santee Cooper or their counsel with respect to any income earned by the Settlement Benefit for any period during which the Settlement Benefit does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all

expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, “Tax Expenses”).

c. In all events neither Santee Cooper nor its counsel and advisors shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Settlement Benefit, the Settlement Administrator shall indemnify and hold harmless Santee Cooper and its counsel and advisors for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Benefit and shall timely be paid by the Settlement Administrator out of the Settlement Benefit without prior order from the Court, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Santee Cooper nor its counsel and advisors are responsible therefor, nor shall they have any liability therefor. The Parties agree to cooperate with the Settlement Administrator, each other, their tax attorneys, and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

#### **IV. DISTRIBUTION OF THE SETTLEMENT BENEFIT**

4.01. **Costs to Be Paid from Settlement Benefit.** The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the Settlement and shall oversee distribution of the Settlement Benefit to Class Members pursuant to the Distribution Plan. Subject to the terms of this

Agreement, the Distribution Plan and any order(s) of the Court, the Settlement Benefit shall be applied as follows:

- a. To pay the Taxes and Tax Expenses;
- b. To pay any Incentive Award and Attorney Fee/Litigation Cost Award that is allowed by the Court, subject to and in accordance with the Agreement;
- c. To pay the Settlement Administration Costs incurred in carrying out the Settlement; and
- d. To distribute the balance of the Settlement Benefit (the “Net Distribution”) to Class Members as allowed by the Agreement, the Distribution Plan, and order of the Court.

4.02. **Distribution of Settlement Benefit.** The Net Distribution shall be allocated among Class Members substantially in accordance with the Distribution Plan. From the Net Distribution a minimum payment amount of \$5.00 per Class Member will be allocated to Class Members, and the remainder of the Net Distribution shall be allocated among Class Members in proportion to their estimated contribution to the Pee Dee Project costs. No funds from the Settlement Benefit shall be distributed to Class Members until after the date provided in paragraphs 4.04 through 4.06 below. All Class Members shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Final Approval Order with respect to all Released Claims, regardless of whether such Class Members obtain any distribution from the Settlement Benefit. The Settlement Administrator, subject to supervision and direction of the Court and Class Counsel, shall administer the Settlement, oversee distribution of the Settlement Benefit for Class Members, and cooperate with Santee Cooper to facilitate bill credits for Active Accounts.

4.03. **Calculation of Payments and Bill Credits.** No later than sixty (60) Days after the Date of Notice, the Settlement Administrator shall calculate the individual Class Member amounts

for payments and bill credits to be made pursuant to paragraphs 4.04 and 4.05 (“the Final Allocation Calculation”) and provide this information to Santee Cooper, including the total amount necessary to fund and apply the bill credits to Accounts identified as Active pursuant to paragraph 2.05.

4.04. **Active Accounts.** Distributions to Class Members with Active Accounts shall be made by bill credit if the Class Member’s allocation is less than two hundred dollars (\$200.00), and by check if the Class Member’s allocation is at least two hundred dollars (\$200.00).

a. No later than thirty (30) Days after the Effective Date, the Settlement Administrator shall begin issuing checks to Class Members entitled to distribution by check.

b. No later than fourteen (14) Days after the Effective Date, the Settlement Administrator shall remit to Santee Cooper a sum sufficient to fund the credits to Active Accounts.

c. No later than fourteen (14) Days after receipt of funds pursuant to paragraph 4.04.b, Defendant shall begin to apply credits to Customers’ Accounts.

d. All credits shall be reflected on Class Members’ Accounts no later than ninety (90) Days after receipt of funds pursuant to paragraph 4.04.b.

4.05. **Inactive Accounts.** Distributions to Class Members whose Accounts are Inactive Accounts shall be made by check.

a. No later than thirty (30) Days after the Effective Date, the Settlement Administrator shall begin issuing checks to Class Members entitled to distribution by check.

4.06. **Inactive Accounts Initially Identified as Active.** The Parties anticipate that after the initial identification of Active and Inactive Accounts pursuant to paragraph 2.05, Class Members who would qualify for a bill credit pursuant to this Settlement Agreement may, due to the passage of time, no longer possess an Active Account. If upon the issuance of bill credits

pursuant to paragraph 4.04 Santee Cooper identifies Class Members whose Accounts have become Inactive Accounts, Santee Cooper shall provide the Settlement Administrator a list of all such Class Members and Accounts and shall remit to the Settlement Administrator the funds due to such Class Members, and no later than fourteen (14) Days after receipt of this list and funds, the Settlement Administrator shall effect the distribution by check.

4.07. **Agreement not Conditioned on Distribution Plan.** The plan of allocation proposed in the Distribution Plan is not a necessary term of Agreement, and it is not a condition of the Agreement that any particular plan of allocation be approved by the Court. Representative Plaintiff and Class Counsel may not cancel or terminate the Agreement based on the Court's or any appellate court's ruling with respect to the Distribution Plan or any other plan of allocation. Defendant shall not object to the plan of allocation outlined in the Distribution Plan.

4.08. **No Liability for Settlement Benefit Distribution.** Defendant will make reasonable efforts to facilitate Class Counsel's receipt of information necessary to identify Class Members entitled to a distribution from the Settlement Benefit. Neither the Releasees nor their counsel, however, shall have any responsibility for, or liability whatsoever with respect to, the distribution of the Settlement Benefit by the Settlement Administrator; the Distribution Plan; the determination, administration, or calculation of claims; or any other aspect of settlement administration. The Releasers hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability, in addition to the releases set forth in Section V. No Person shall have any claim against Class Counsel or the Settlement Administrator based on distributions made substantially in accordance with the Agreement and the Settlement, the Distribution Plan, or further orders of the Court.

4.09. **Delayed Benefits.** Allocations of the Settlement Benefit to any Class Member that are delayed because of a disputed exclusion request, or for other reasons, shall not be made on the schedule set forth in this part, but instead shall be made if such dispute is finally resolved at a reasonable time thereafter.

4.10. **All Claims Satisfied by Settlement Benefit.** Each Class Member shall look solely to the Settlement Benefit for settlement and satisfaction of all claims released herein. No Class Member shall have any interest in the Settlement Benefit, or any portion thereof. All Class Members shall be subject to and bound by the provisions of this Agreement, including the releases, and the Final Approval Order with respect to all Class Claims, regardless of whether such Class Members obtain any distribution from the Settlement Benefit.

4.11. **Balance Remaining.** If there is any balance remaining after distribution of the Settlement Benefit (whether by reason of tax refunds, uncashed checks, or otherwise), 50% of the residual funds shall be distributed to the South Carolina Bar Foundation to support activities and programs promoting access to the civil justice system for low income residents of South Carolina, as required by Rule 23(e)(2) of the South Carolina Rules of Civil Procedure. The remaining fifty percent (50%) of any residual funds will be paid to charitable organizations selected by Class Counsel, and approved by the Court, that provide energy assistance to low income individuals.

## V. RELEASE

5.01. **Released Claims.** Upon the Effective Date, and pursuant to the Court's entry of the Final Approval Order, the Releasers do hereby unconditionally, completely, and irrevocably release and dismiss each and all Releasees with prejudice and on the merits (without an award of costs to any party other than those provided in Section VI). The Releasers (regardless of whether any such Releaser ever obtains recovery by any means, including, without limitation, by receiving

any distribution from the Settlement Benefit) shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

5.02. **No Future Actions.** The Releasors shall not, after the Effective Date, seek (directly or indirectly) to commence, institute, maintain, or prosecute any suit, action, or complaint of any kind (including, but not limited to, claims for actual damages, statutory damages, exemplary damages, or punitive damages) against the Defendant, or any other Releasee, based on the Released Claims, in any forum, whether on his or her own behalf or as part of any putative, purported, or certified class. The Parties contemplate and agree this Agreement may be pleaded as a bar to a lawsuit or other action, and an injunction may be obtained preventing any action from being initiated or maintained, in any case sought to be prosecuted on behalf of any Releasor (including, but not limited to, for actual damages, statutory damages, exemplary damages, or punitive damages) against any Releasee based on the claims described in paragraph 5.01.

5.03. **Dismissal.** Subject to Court approval, the Releasors shall be bound by this Agreement, and all their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this Settlement.

## **VI. ATTORNEYS' FEES AND COSTS; INCENTIVE AWARD**

6.01. **Attorney Fee/Litigation Cost Award.** Class Counsel may submit an application or applications for an Attorney Fee/Litigation Cost Award no later than twenty-one (21) Days prior to the Final Approval Hearing for distributions from the Settlement Benefit for: (i) Attorney Fee/Litigation Cost Award and (ii) Incentive Award to Representative Plaintiff. Application for



such award shall not be made in conjunction with the Motion for Final Approval; it shall be by separate motion, and, to the extent approved, by separate order.

a. Class Counsel agree that an application for an Attorney Fee/Litigation Cost Award will not seek an amount in excess of thirty-three and one-third (33.33)% of the Settlement Benefit for attorneys' fees. Class Counsel are also permitted to seek reimbursement of reasonable litigation expenses incurred in this action. Defendant will not contest an application for attorneys' fees up to thirty-three and one-third percent (33.33%) of the Settlement Benefit, provided it is paid from the Settlement Benefit.

b. Class Counsel and Representative Plaintiff agree that an application for an Incentive Award shall not exceed ten thousand dollars (\$10,000.00). Defendant will not contest an application for an Incentive Award up to that amount, provided it is paid from the Settlement Benefit.

6.02. **Payment of Attorney Fee/Litigation Cost and Incentive Awards.** Any amounts awarded by the Court pursuant to paragraph 6.01 shall be paid from the Settlement Benefit consistent with the provisions of this Agreement. To the extent Attorney Fee/Litigation Cost and Incentive Awards are ordered, those payments shall be made by the Settlement Administrator from the Settlement Benefit no later than fourteen (14) Days after the Effective Date. Defendant shall have no obligations related to Class Counsel's fees or expenses or the payment thereof beyond Santee Cooper's payment of the Settlement Benefit.

6.03. **Payment of Settlement Administration Costs.** Settlement Administration Costs shall be paid solely from the Settlement Benefit.

6.04. **Award of Fees and Expenses Not Part of Settlement.** The procedure for allowance or disallowance by the Court of the Attorney Fee/Litigation Cost Award is not part of

the Settlement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. In the event the Court denies, in whole or in part, any application made by Class Counsel for an Attorney Fee/Litigation Cost Award or an Incentive Award, this Agreement remains in effect.

6.05. **No Liability for Fees and Expenses to Class Counsel.** Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to any payment(s) to Class Counsel pursuant to this Agreement or to any other Person who may assert some claim thereto or any Attorney Fee/Litigation Cost Award the Court may make in the Action, other than as set forth in this Agreement. Similarly, neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to allocation among Class Counsel or any other Person who may assert some claim thereto, of any Attorney Fee/Litigation Cost Award the Court may make in the Action. The Parties contemplate and agree, and the Court shall order, that this Agreement and the Release may be pleaded as an absolute bar against any claim against Releasees by any Person that may arise from or relate to the payment of Attorney Fee/Litigation Cost Award or Incentive Award.

6.06. **Jurisdiction Over Fee Dispute.** The Court shall retain jurisdiction of any dispute regarding the distribution of the Settlement Benefit that is available to Class Members or any Attorney Fee/Litigation Cost Award or Incentive Award.

**VII. CONDITIONS OF SETTLEMENT, INCLUDING EXCLUSIONS, AND EFFECT OF TERMINATION, DISAPPROVAL, AND APPEAL**

7.01. **Effective Date.** This Agreement and the Settlement shall not be effective until the Effective Date. Until that time, Defendant shall have no obligation to provide the Settlement Benefit or pay or set aside any monies due or potentially due under the terms of this Agreement. Notwithstanding the foregoing, upon entry of the Preliminary Approval Order, Santee Cooper

agrees to advance a sum of no more than two hundred thousand dollars (\$200,000) to be used for the initial notice costs, and if the Settlement is terminated, not finally approved, or for any reason does not become final as contemplated by this Agreement, Class Counsel will refund this sum to Santee Cooper.

7.02. **Effect of Appeal on Effective Date.** The appeal of an order obligating Defendant to provide settlement benefits or pay attorneys' fees suspends the Defendant's obligations until and unless the appeal results in the affirmance of an order consistent with the terms of this Agreement.

7.03. **Failure of Effective Date to Occur.** If all conditions specified in paragraph 1.13 are not met, this Agreement shall be cancelled and terminated, subject to and in accordance with paragraph 7.12 unless the Parties mutually agree in writing to proceed with this Agreement. The effectiveness of the Settlement is expressly conditioned on the Settlement being approved by the Court and, if appealed, upheld on any appeal without this Agreement being rejected or required to be materially modified. If the Court does not enter the Final Approval Order or if the Court enters the Final Approval Order and appellate review is sought and, on such review, the Final Approval Order is finally vacated, materially modified, or reversed, then this Agreement and Settlement shall terminate and cease to have any effect.

7.04. **Exclusions.** Any Person who wishes to opt out of the Settlement Class must do so on or before the Exclusion Deadline as specified in the Notice. In order to become a Successful Opt-Out, a Person who meets the definition of the Settlement Class must complete and mail a request for exclusion to the Settlement Administrator. A request for exclusion shall be valid and treated as a Successful Opt-Out if the exclusion request includes the following information: (1) the Person's full name, current address, and telephone number; (2) the Person's residential or

commercial service address(es); (3) the Person's Santee Cooper Account number(s) as to which he or she seeks exclusion; (4) an unequivocal statement that the Person intends to be excluded from the Settlement Class and to forgo all rights and benefits of the Settlement; and (5) the Person's signature. Successful Opt-Outs may opt out of the Settlement Class only on an individual basis; so-called mass or class opt-outs shall not be allowed and shall be of no force or effect. A Person acting pursuant to a legal power of attorney, however, may request exclusion of an individual. Class Counsel shall cause copies of requests for exclusion to be provided to Defendant's Counsel. No later than fourteen (14) Days after the Exclusion Deadline, Class Counsel shall provide to Defendant's Counsel a complete and final list of Successful Opt-Outs and copies of the requests for exclusion. With their Motion for Final Approval of the Settlement, Class Counsel will file a complete list of Successful Opt-Outs, including the name, city, and state of the person requesting exclusion (the "Opt-Out List").

7.05. **Ambiguous Opt-Out.** If Defendant determines any ambiguity exists as to whether a Person's communication contains a request to opt out, the Parties shall, if possible, resolve such ambiguity by agreement and shall inform the Court of their position at the Final Approval Hearing. Defendant's Counsel or Class Counsel may dispute an exclusion request, and the Parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position at the Final Approval Hearing. The Court shall retain jurisdiction to resolve any disputed exclusion requests.

7.06. **Reservation of Rights as to Successful Opt-Outs.** With respect to any Successful Opt-Outs, Defendant reserves all its legal rights and defenses, including, but not limited to, any defenses relating to whether the person qualifies as a Class Member and/or has standing to bring any claim. Defendant may challenge the validity of any Successful Opt-Out by providing written

notice to Class Counsel no later than ten (10) Days after Class Counsel provides Defendant's Counsel the Opt-Out List and copies of the requests for exclusion. Such notice shall void the Opt-Out(s) unless Class Counsel disputes the notice in writing, in good faith, with Defendant's Counsel no later than five (5) Days of receipt of the notice. The Court shall have jurisdiction to resolve any disputes regarding the validity of Successful Opt-Outs. Class Counsel shall have no obligation to represent an attempted or Successful Opt-Out.

7.07. **Rescission Based on Exclusions.** Defendant shall have the right to set aside or rescind this Agreement, in its sole discretion, if the number of Persons requesting exclusion from the Settlement Class exceeds five percent (5%) of the total Persons otherwise within the Settlement Class. Defendant shall have ten (10) Days from receipt of the final Successful Opt-Out list to exercise this right to set aside or rescind this Agreement.

7.08. **Objections.** Class Members who wish to object to any aspect of the Settlement must serve a written objection to the Settlement ("Objection") upon Class Counsel and Defendant's Counsel at the addresses in the Class Notice and file the Objection simultaneously with the Court prior to the Objection Deadline. All Objections must include the following information: (1) the Class Member's full name, current address, and telephone number; (2) the Class Member's residential or commercial service address(es); (3) the Class Member's Santee Cooper Account number(s); (4) all specific objections and the reasons in support thereof, and any and all supporting papers; and (5) a statement of whether the Class Member or his or her counsel will appear at the Final Approval Hearing. If a Class Member intends to object through counsel, the Class Member's attorney must append a list of all prior objections previously filed by such counsel in state and federal courts, and with respect to each, provide (1) the case number; (2) the court where the prior objection was filed; and (3) the outcome of the objection. If a Class Member

intends to appear and requests to be heard, either individually or through counsel, the Class Member or his or her counsel must file a notice of appearance no later than fourteen (14) Days before the Final Approval Hearing. Any Class Member who does not submit a timely Objection in accordance with this Agreement and orders of the Court, shall not be treated as having filed a valid Objection to the Settlement.

7.09. **Attorneys' Fees Related to Objectors.** Any award or payment of attorneys' fees made to the counsel of an objector to the Settlement shall be made only by Court order and upon a showing of the benefit conferred to the Settlement Class. In determining any such award of attorneys' fees to an objector's counsel, the Court will consider the incremental value to the Settlement Class caused by any such objection. Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter other than as ordered by the Court. Any such award shall be payable from the Settlement Benefit. Defendant shall have no responsibility for any such payments.

7.10. **Failure to Enter Proposed Preliminary Approval Order or Final Approval Order.** If the Court does not enter the Preliminary Approval Order or the Final Approval Order or does so in a form materially different from the forms contemplated by this Agreement, or if the Court enters the Final Approval Order and appellate review is sought and, on such review, the Final Approval Order is finally vacated, materially modified, or reversed, then this Agreement and the Settlement incorporated herein shall be cancelled and terminated; provided, however, the Parties agree to act in good faith to secure final approval of this Settlement and address concerns regarding the Settlement identified by the Court and any appellate court.

7.11. **Other Orders.** No Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any application for Attorney Fee/Litigation Cost Award, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Party. Without limiting the foregoing, Defendant shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety if the Final Approval Order, upon entry by the Court, does not dismiss the Action and Released Claims with prejudice.

7.12. **Termination.** This Agreement shall be terminable at the option of Defendant if any of the following occurs:

- a. More than five percent (5%) of the Persons within the Settlement Class become Successful Opt-Outs;
- b. The Court or any other court permits Plaintiff to opt out as a representative, or otherwise to exercise or preserve the opt-out or substantive rights of others;
- c. Any Person is allowed to object in the Action and this objection or intervention results in material changes to the Settlement Agreement that Defendant deems material;
- d. The Court fails to approve this Agreement as written and agreed to by the Parties; or
- e. Representative Plaintiff and Defendant mutually agree to terminate the Agreement.

7.13. **Effect of Termination.** If this Agreement is terminated, then:

a. Class Counsel shall provide notice of any such terminable event to the Settlement Administrator no later than five (5) Days of the event occurring;

b. The Parties shall be restored to their respective positions in the Action as of the Execution Date, with all respective claims and defenses preserved as they existed on that date; and

c. Any judgment or order entered by the Court in accordance with this Agreement shall be treated as vacated *nunc pro tunc*. No other orders shall be affected.

### **VIII. NO ADMISSION OF LIABILITY**

8.01. **Final and Complete Resolution.** The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Action and Released Claims and to compromise contested claims, and it shall not be deemed an admission by any Party as to the merits of any claim or defense or any allegation made in the Action.

8.02. **South Carolina Rule of Evidence 408.** This Agreement, its terms, and the negotiations surrounding this Agreement shall be governed by Rule 408, South Carolina Rules of Evidence and any federal or state-law equivalents and shall not be admissible or offered or received into evidence in any suit, action, or other proceeding, except upon the written agreement of the Parties, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare, or enforce the rights of the Parties with respect to any provision of this Agreement.

8.03. **Use of Agreement as Evidence.** Whether or not this Agreement becomes final or is terminated pursuant to its terms, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of



any Released Claims, any allegation made in the Action, or any violation of any statute or law or of any wrongdoing or liability of Defendant, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other proceeding; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault, or omission of the Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose except to enforce the terms of the Settlement; provided, however, that the Releasees may file this Agreement (including the exhibits), the Preliminary Approval Order, or the Final Approval Order in any action in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **IX. REPRESENTATIONS AND WARRANTIES**

9.01. **Class Settlement Procedure and Implementation.** This Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Rule 23, South Carolina Rules of Civil Procedure. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Representative Plaintiff and Class Counsel represent and warrant they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement, and will not attempt to void this Agreement in any

way, except as expressly set forth herein. This includes the obligations (i) to seek approval of this Agreement and of the Settlement by the Court; (ii) to oppose objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (iii) to move for the entry of the Preliminary Approval and Final Approval Orders; and (iv) to join in the entry of such other orders or revisions of orders or notices, including the attached orders. This also includes not (i) soliciting or encouraging any Person in the Settlement Class to request exclusion or (ii) soliciting or encouraging any effort by any Person to object to the Settlement. Representative Plaintiff warrants he will not request exclusion of himself from the Settlement.

9.02. **Totality of Attorneys' Fees.** Representative Plaintiff and Class Counsel represent and warrant that any award of attorneys' fees and litigation costs and incentives they may seek upon application to the Court, pursuant to Section VI, shall include all attorneys' fees and litigation costs in this Action. To the extent that lawyers or firms other than Class Counsel claim an interest in attorneys' fees or reimbursable costs and expenses to be paid in this Action, Class Counsel (a) agree that Santee Cooper's payment of the Settlement Benefit fully satisfies any and all claims for attorneys' fees, costs and expenses, (b) warrant that all such claims shall be paid from the award of attorneys' fees approved by the Court, and (c) agree they will indemnify Santee Cooper against any claim that Santee Cooper is liable for attorneys' fees and expenses except as set forth herein.

9.03. **Authorization to Enter Settlement Agreement.** Representative Plaintiff, Class Counsel, and Defendant represent and warrant they are fully authorized to enter this Agreement and carry out the obligations provided for herein. Each Person executing this Agreement on behalf of a Party or other Person covenants, warrants, and represents they are and have been fully authorized to do so by that Party or other Person. Representative Plaintiff, Class Counsel, and Defendant represent and warrant they intend to be bound fully by the terms of this Agreement.

9.04. **Class Counsel Representations.** Class Counsel represent and warrant (i) they seek to represent and protect the interests of the Settlement Class; (ii) they owe a duty of care and loyalty to the Settlement Class, and some interests of the Successful Opt-Outs will be different from and in conflict with the interests of the Settlement Class represented by Class Counsel; (iii) their responsibilities to the Class Members will continue beyond the Effective Date and will require Class Counsel to represent the interests of such Class Members until all Class Members receive the benefits outlined in this Agreement; and (iv) the representations and warranties in this paragraph are material terms of the Agreement, and Defendant's continuing obligations under the Agreement are dependent upon these representations and warranties.

9.05. **Jurisdiction in Event of Breach.** If any Person breaches the representations and warranties in this section, the Court shall retain jurisdiction over this matter to entertain action by a Party against such Person for breach or any Party's request for a remedy for such breach.

9.06. **Preliminary Approval and Final Approval Dates.** Counsel for the Defendant and Class Counsel will work diligently and cooperatively to obtain dates for Preliminary Approval and Final Approval that will allow Settlement to be completed at the earliest practicable date.

## **X. MISCELLANEOUS PROVISIONS**

10.01. **Subsequent Events Affecting Administration.** In the event there are any developments in the effectuation or administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court.

10.02. **Claims in Connection with Administration.** No Person shall have any claim against the Representative Plaintiff or Class Counsel, Defendant or its Counsel, the Settlement Administrator, or the Releasees or their agents based on administration of the Settlement

substantially in accordance with the terms of the Agreement or any order of the Court or any appellate court.

**10.03. Effect of Lack of Final Approval.** This Agreement is entered only for purposes of settlement and shall not be construed as an admission the class was appropriate in the Action or is a certifiable class in any litigation. If Final Approval does not occur for any reason, this Agreement shall become null and void. In that event, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible evidence for any purpose, including for purposes related to the certification of the class. In addition, the Parties shall revert to their respective positions prior to Settlement, and the agreements contained herein shall be null and void and shall not be cited or relied upon as an admission as to the Court's jurisdiction or the propriety of class certification, and the Parties shall have all rights, claims, and defenses they had before they entered the Settlement Agreement or submitted it to the Court, as if the Settlement had never existed.

**10.04. Confidentiality of Settlement Negotiations.** The Parties and their counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the Parties' negotiation of this Settlement and/or this Agreement. For the sake of clarity, information contained within this Agreement shall be considered public, as well as any information requested by the Court in the approval process and other such information necessary to implement this Settlement, provided such information is filed (and is not under seal) or is not considered to be confidential material under the Protective Order entered in this Action.

10.05. **Confidentiality Order.** Plaintiff and Defendant represent and warrant they will continue to be bound by the Protective Order entered in this Action, including the provisions relating to return or destruction of documents or information designated as “CONFIDENTIAL,” as defined in the Protective Order, upon the conclusion of the Action.

10.06. **Choice of Law.** This Agreement was negotiated, executed, and delivered, and is to be wholly performed, in the State of South Carolina, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of South Carolina without giving effect to that state’s choice of law principles.

10.07. **Attorneys’ Fees and Costs.** Each party shall bear its own costs and attorneys’ fees, except as expressly provided herein.

10.08. **Integrated Agreement.** The terms and conditions in this Agreement constitute the complete and exclusive agreement between the Parties and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. This Agreement supersedes all prior negotiations and agreements, including the Settlement Term Sheet. Any modification of the Agreement must be confirmed and executed in writing by all Parties and served upon Defendant’s Counsel and Class Counsel. Except for the matters expressly represented herein, the facts or law may turn out to be different from those now known to each Party or believed by such Party to be true. Each Party expressly assumes the risk of the facts or law turning out to be different and agrees this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

10.09. **Joint Drafters.** This Agreement was drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

10.10. **Binding Effect.** This Agreement shall inure to the benefit of the respective heirs, successors, and assigns of the Parties, and each and every one of the Releasees shall be deemed to be intended third-party beneficiaries of this Agreement and, once approved by the Court, of the Settlement.

10.11. **Notices.** All notices and responses to notices under this Agreement shall be in writing. Each such notice or response shall be given either by (i) hand delivery; (ii) registered or certified mail, return receipt requested, postage pre-paid; (iii) FedEx or similar overnight courier; or (iv) as between the Parties and Persons who have properly entered appearances upon the record, as provided in the South Carolina Rules of Civil Procedure; and, if directed to any Class Member, shall be addressed to Class Counsel at their addresses set forth below, and if directed to Defendant, shall be addressed to Defendant's Counsel at the address set forth below or such other addresses as Class Counsel or Defendant's Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this paragraph. Copies of all notices under this Agreement may, at the notifying party's option, be transmitted by email to the appropriate parties. Providing a copy by email shall only be in addition to, and not a substitute for, the formal mechanisms provided for in (i), (ii), or (iii) of this paragraph.

If directed to the Plaintiff or any Class Member, address notice to:

**RICHARDSON, THOMAS, HALTIWANGER,  
MOORE & LEWIS, LLC**

Daniel S. Haltiwanger

William C. Lewis

Brady R. Thomas

1513 Hampton Street

Columbia, SC 29201

Tel: (803) 541-7850

Fax: (803) 541-9625

**ROGERS, PATRICK, WESTBROOK &  
BRICKMAN, LLC**

Matthew A. Nickles  
1513 Hampton Street, 1<sup>st</sup> Floor  
Columbia, SC 29201  
Tel: (843) 727-6500  
Fax: (803) 259-4403

**HALL BOOTH SMITH, P.C.**

Jack G. Gresh  
Lauren Spears  
40 Calhoun Street  
Charleston, SC 29401  
Tel: (843) 720-3460  
Fax: (843) 720-3458

**L. MORGAN MARTIN, P.A.**

L. Morgan Martin  
1121 3rd Avenue  
Conway, SC 29526  
Tel: (843) 484-0993  
Fax: (843) 248-2842

*Class Counsel*

If directed to Santee Cooper, address notice to:

**NELSON MULLINS RILEY &  
SCARBOROUGH LLP**

A. Mattison Bogan  
B. Rush Smith III  
Carmen H. Thomas  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201

*Counsel for Santee Cooper*

10.12. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

10.13. **Execution in Counterparts.** The Parties and their respective counsel may execute this Agreement in counterparts. Each counterpart shall be deemed an original, and execution of counterparts shall have the same force and effect as if all Parties and their respective counsel signed the same instrument.

10.14. **Jurisdiction.** Although the Court shall enter a judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement.

10.15. **Incorporation by Reference; No Conflict Intended.** All of the attached exhibits are incorporated by reference. Notwithstanding the foregoing, in the event a conflict or inconsistency exists between the terms of this Agreement and the terms of any exhibit, the terms of the Agreement shall prevail.

10.16. **Headings.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement

10.17. **Material Terms.** The terms of this Agreement are material to the Parties, and each term shall be so construed. In particular, and without limiting the foregoing, the terms of this Agreement may not be modified, changed, waived, or overridden based on a conclusion or determination that such term is not as important as every other term, or that any Person other than a Party hereto, or counsel of record in the Action, has modified, changed, waived, or overridden such term.

10.18. **Independent Counsel.** Defendant and Representative Plaintiff acknowledge they have been represented and advised by independent legal counsel throughout the Action and negotiations that culminated in this Agreement, and they voluntarily executed the Agreement with



the consent and on the advice of counsel. The Parties negotiated and reviewed fully the terms of this Agreement.

10.19. **Intended Beneficiaries.** No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not the Plaintiff, a Class Member, the Defendant, one of the Releasees, Class Counsel, or Defendant's Counsel, except this Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties. No Plaintiff, Class Member, or Class Counsel may assign or otherwise convey any right to enforce any provision of this Agreement.

10.20. **Regular Course of Business.** Nothing in this Agreement shall be construed to prohibit communications between Defendant and the Releasees, on the one hand, and Class Members, on the other hand, in the regular course of business.

10.21. **Tax Consequences.** No representations or advice regarding the tax consequences of this Agreement have been made by any Party. The Parties further understand and agree that each Party, each Class Member, each Class Counsel, and Plaintiff shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payment made or benefit received pursuant to this Agreement.

10.22. **Bankruptcy Proceedings.**

a. The Parties agree any Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the period of time covered in the Settlement Class definition may only participate in the Settlement subject to applicable bankruptcy law and procedures. Defendant is under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Class Member's bankruptcy proceedings or any

trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by the Agreement and the Settlement.

b. Any disputes concerning the rights of the bankruptcy estate to the proceeds of any Settlement Benefit or Incentive Award shall be adjudicated by the Bankruptcy Court. The Settlement Administrator shall follow any direction of the Bankruptcy Court with respect to the proceeds of any payment or Incentive Award. In the event the Bankruptcy Court issues any order or orders that do more than adjudicate the proceeds of any payment or Incentive Award, and such order or orders are material in the judgment of Defendant, exercised in good faith, Defendant shall have the right to terminate this Agreement.

10.23. **Class Member Obligations.** Under no circumstances shall the Settlement or Agreement or any release herein be deemed to alter, amend, or change the terms and conditions of any account to which any Class Member is or was a party, or to provide a defense to any obligation to pay monies to Santee Cooper in the event the Class Member is a customer of Santee Cooper, nor shall the Settlement or the Agreement or the Release be deemed to have any effect in any bankruptcy case or in any other action involving a Class Member, nor shall the Settlement Agreement create or be construed as evidence of any violation of law or contract. In the event this Agreement is so construed as to a particular Class Member, it can be declared by Santee Cooper to be null and void as to that Class Member only (and in such latter event, the Release as to that Class Member shall also be void).

*[Signature Pages Attached]*

By   
**REPRESENTATIVE PLAINTIFF**  
George M. Hearn, Jr.

Date: 6/3/21

By \_\_\_\_\_  
**RICHARDSON, THOMAS, HALTIWANGER,  
MOORE & LEWIS, LLC**  
Daniel S. Haltiwanger  
William C. Lewis  
Brady R. Thomas  
1513 Hampton Street  
Columbia, SC 29201  
Tel: (803) 541-7850  
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**ROGERS, PATRICK, WESTBROOK &  
BRICKMAN, LLC**  
Matthew A. Nickles  
1513 Hampton Street, 1<sup>st</sup> Floor  
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Fax: (803) 259-4403

**HALL BOOTH SMITH, P.C.**  
Jack G. Gresh  
Lauren Spears  
40 Calhoun Street  
Charleston, SC 29401  
Tel: (843) 720-3460  
Fax: (843) 720-3458


**L. MORGAN MARTIN, P.A.**  
L. Morgan Martin  
1121 3rd Avenue  
Conway, SC 29526  
Tel: (843) 484-0993  
Fax: (843) 248-2842

*Class Counsel*

Date: \_\_\_\_\_

By \_\_\_\_\_  
**REPRESENTATIVE PLAINTIFF**  
George M. Hearn, Jr.

Date: \_\_\_\_\_

By   
**RICHARDSON, THOMAS, HALTIWANGER,  
MOORE & LEWIS, LLC**  
Daniel S. Haltiwanger  
William C. Lewis  
Brady R. Thomas  
1513 Hampton Street  
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**ROGERS, PATRICK, WESTBROOK &  
BRICKMAN, LLC**  
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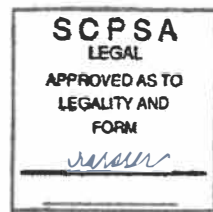
**HALL BOOTH SMITH, P.C.**  
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Lauren Spears  
40 Calhoun Street  
Charleston, SC 29401  
Tel: (843) 720-3460  
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**L. MORGAN MARTIN, P.A.**  
L. Morgan Martin  
1121 3rd Avenue  
Conway, SC 29526  
Tel: (843) 484-0993  
Fax: (843) 248-2842

*Class Counsel*

Date: 6/3/2021

By   
**SANTEE COOPER**  
Mark Bonsall  
1 Riverwood Drive  
Moncks Corner, South Carolina 29461  
*President and CEO of Santee Cooper*



Date: June 4, 2021


By \_\_\_\_\_  
**NELSON MULLINS RILEY & SCARBOROUGH LLP**  
A. Mattison Bogan  
B. Rush Smith III  
Carmen H. Thomas  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201  
*Counsel for Santee Cooper*

Date: \_\_\_\_\_

By \_\_\_\_\_  
**SANTEE COOPER**  
Mark Bonsall  
1 Riverwood Drive  
Moncks Corner, South Carolina 29461

*President and CEO of Santee Cooper*

Date: \_\_\_\_\_

By  \_\_\_\_\_  
**NELSON MULLINS RILEY & SCARBOROUGH LLP**  
A. Mattison Bogan  
B. Rush Smith III  
Carmen H. Thomas  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201

*Counsel for Santee Cooper*

Date: 6/4/21

EXHIBITS TO SETTLEMENT AGREEMENT

- Exhibit A      Distribution Plan
- Exhibit B      Proposed Final Approval Order
- Exhibit C      Notice Plan
- Exhibit D      Proposed Preliminary Approval Order

**EXHIBIT A**

**TO THE SETTLEMENT**

**AGREEMENT**



## **DISTRIBUTION PLAN**

*George M. Hearn Jr., et al. v. South Carolina Public Service Authority d/b/a Santee Cooper,*  
Case No. 2017-CP-26-5256

### **I. Settlement Benefit**

Pursuant to the proposed Settlement, Santee Cooper will pay twelve million five hundred thousand dollars (\$12,500,000.00) into a fund (the “Settlement Benefit”).

### **II. Distribution Methodology**

Santee Cooper has provided to Class Counsel information sufficient for Class Counsel or the Settlement Administrator to allocate the Settlement Benefit among the Class Members in proportion to Class Members’ estimated contribution to the Pee Dee Project costs. No later than sixty (60) Days after the Date of Notice, the Settlement Administrator shall calculate the individual Class Member amounts for payments and bill credits to be made pursuant to paragraphs 4.04 and 4.05 of the Settlement Agreement and provide this information to Santee Cooper, including the total amount necessary to fund and apply the bill credits to Accounts identified as Active pursuant to paragraph 2.05 (the “Final Allocation Calculation”).

### **III. Distribution**

The distribution from the Settlement Benefit shall consist of Santee Cooper’s twelve million five hundred thousand dollars (\$12,500,000.00) payment less (1) Taxes and Tax Expenses; (2) any Attorney Fee/Litigation Cost Award and Incentive Awards allowed by the Court; (3) Notice and Settlement Administration Costs; and (4) for any and all Class Members who submit valid requests for exclusion, the amount those Class Members would have received had they not chosen to submit such a request. No later than thirty (30) Days after the Effective Date, the Settlement Administrator shall begin to issue checks to the Class Members who are entitled to payment by check in accordance with the Final Allocation Calculation. Payments shall be made subject to and in accordance with Settlement Agreement § IV. The Settlement Administrator shall remit to Santee Cooper a sum sufficient to fund the credit to Active Accounts in accordance with the Final Allocation Calculation. No later than fourteen (14) Days after receipt of these funds, Santee Cooper shall begin to issue bill credits in accordance with the Final Allocation Calculation. If Santee Cooper is unable to apply bill credits because Class Members’ Accounts have become Inactive Accounts, Santee Cooper shall identify these Class Members and Accounts to the Settlement Administrator and remit the funds due to such Class Members to the Settlement Administrator, and the Settlement Administrator shall effect payment by check to these Class Members no later than fourteen (14) Days after receipt of such funds.

### **IV. Payment Methods**

#### **A. Bill Credits and Checks**

Payments shall be made subject to and in accordance with the following:

1. Each Class Member who is a current customer of Santee Cooper and whose distribution is less than two hundred dollars (\$200.00) shall receive his or her distribution by bill credit;

2. Each Class Member who is a current customer of Santee Cooper and whose distribution is at least two hundred dollars (\$200.00) shall receive his or her distribution by check;

3. Each Class Member who is not a current customer of Santee Cooper shall receive his or her distribution by check.

**B. Rules for Check Payments**

For any payments made to Class Members via check:

1. If a check is returned to the Settlement Administrator by the post office with a forwarding address, the Settlement Administrator shall re-mail the check to the forwarding address.

2. If a check is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator will use reasonable efforts to attempt to find a new address, after which, if a new address is found, the Settlement Administrator shall re-mail the check to the new address.

3. Payments made to Class Members via check will be deemed unclaimed in the following situations:

a. The Settlement Administrator cannot obtain an address for a Class Member who is a former customer, and the Class Member who is a former customer does not contact the Settlement Administrator within 120 Days after the distribution. (Class Counsel and Santee Cooper’s Counsel shall promptly notify the Settlement Administrator in writing if a former customer Class Member previously not located reports an address within this timeframe, and the Settlement Administrator shall re-mail the check to the new address.)

b. The Class Member who is a former customer does not cash the check within one hundred and twenty (120) days or the Settlement Administrator is unable to locate an address for a Class Member who is a former customer whose check is returned within one hundred and twenty (120) days of payment.

**C. Miscellaneous**

Santee Cooper will make reasonable efforts to facilitate the Settlement Administrator’s receipt of records necessary to identify Class Members who are former customers entitled to a share of the Settlement Benefit.

**EXHIBIT B**

**TO THE SETTLEMENT**

**AGREEMENT**

STATE OF SOUTH CAROLINA )  
 )  
 )  
 )  
 )  
 COUNTY OF HORRY )  
 )  
 )  
 George M. Hearn, Jr., on Behalf of )  
 Himself and All other Similarly Situated, )  
 )  
 )  
 Plaintiffs, )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 v. )  
 )  
 )  
 South Carolina Public Service Authority )  
 d/b/a Santee Cooper, )  
 )  
 )  
 Defendant. )  
 )  
 )  
 )

---

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
BUSINESS COURT

Civil Action No. 2017-CP-26-05256

**[PROPOSED] ORDER GRANTING  
 SETTLEMENT CLASS CERTIFICATION,  
 FINAL APPROVAL OF CLASS ACTION  
 SETTLEMENT AND DISMISSING THE  
 CASE WITH PREJUDICE**

On \_\_\_\_\_, 2021, Plaintiff filed a Motion for Final Approval for a class action settlement with Defendant, South Carolina Public Service Authority (“Santee Cooper”). The Court, having reviewed the Motion for Final Approval, the Settlement Agreement, the pleadings and other papers on file in this action, and statements of counsel, hereby finds that the Motion should be GRANTED.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For purposes of this Order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the parties’ Settlement Agreement.
2. The Court has held a hearing to consider whether the Settlement is fair, reasonable, and adequate; whether final judgment approving the Settlement and dismissing all claims with prejudice should be entered; whether attorneys’ fees, costs, and expenses and an incentive to the Representative Plaintiff should be awarded and, if so, the amount of same; whether the Settlement Class should be certified for settlement purposes; and such other matters as appropriate.

3. Pursuant to Rule 23, South Carolina Rules of Civil Procedure, the Court certifies the following Class for settlement purposes only:

All residential and business retail customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 and February 28, 2021.

4. The Court further finds that, for settlement purposes only, the prerequisites to a class action under Rule 23, SCRCF are satisfied in that:

a. the number of Class Members is so great that the joinder of all members impracticable;

b. there are questions of law and fact common to the Class;

c. the claims or defenses of the proposed Representative Plaintiff are typical of the claims or defenses of the Class;

d. the proposed Representative Plaintiff has fairly and adequately protected the interests of the Class, and has retained counsel experienced in class action litigation who have, and will continue to, adequately represent the Class;

e. questions of law or fact common to Class Members predominate over any questions affecting only individual members; and

f. the amount in controversy for each Class Member exceeds one hundred dollars (\$100.00).

5. The Settlement is the result of arm's length negotiations, taken in good faith, between counsel for the parties.

6. The Court has been advised that \_\_\_\_\_ [no] objections were made to the Settlement.

7. The Court finds that the proposed Settlement is fair, adequate, and reasonable, and protects the interests of Class Members.

8. The Court appoints George M. Hearn, Jr. as the Representative Plaintiff.

9. The Court appoints the following attorneys as Class Counsel: Daniel S. Haltiwanger, William C. Lewis, and Brady R. Thomas of Richardson, Thomas, Haltiwanger, Moore & Lewis, LLC; Matthew A. Nickles of Rogers, Patrick, Westbrook & Brickman, LLC; Jack G. Gresh and Lauren S. Gresh of Hall Booth Smith, P.C.; and L. Morgan Martin of L. Morgan Martin, P.A.

10. The Court has personal jurisdiction over the Representative Plaintiff and the Settlement Class and subject matter jurisdiction to approve the Settlement.

11. The Court approves the Notice and Notice Plan and finds that notice given to Class Members in this Action afforded Class Members notice and an opportunity to be heard; constituted the best notice practicable; was reasonably calculated under the circumstances to and did in fact apprise Class Members of the pendency of the action, the nature and terms of the proposed Settlement, their right to opt out or object, their right to appear at the Final Approval Hearing, and their right to seek relief; constituted reasonable, due, adequate and sufficient notice to all Persons entitled to notice; and complies in all respects with the requirements of Rule 23 of the South Carolina Rules of Civil Procedure, due process, and any other applicable law.

12. The Court approves the Distribution Plan and directs the parties to implement and consummate the Settlement according to its terms and conditions.

13. \_\_\_\_\_ members of the Class have opted out. A list of valid opt out requests is attached hereto as Exhibit **X**.

14. Defendant, Releasees, and all claims are dismissed with prejudice in this lawsuit and, except as provided for in the Settlement, without cost. Releasees are hereby discharged and released of and from all Released Claims.

15. The parties are directed to comply with all of their obligations under the Settlement.

16. The Court declares that this Order and the judgment of the Court are and shall be binding on and 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 Releasors, and that the Releasors have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees.

17. Class Members will not, hereafter, seek to establish liability against Defendant or seek to recover payment from Defendant, other than that expressly permitted by the Settlement, based, in whole or in part, upon any alleged violations by Defendant that are related to the claims alleged in this action involving the Pee Dee Plant Project. Class Members are hereby permanently enjoined and barred from initiating, continuing, asserting or prosecuting any and all claims against Defendant that are related to the claims alleged in this action involving the Pee Dee Plant Project.

18. The Settlement is a compromise of disputed issues and 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 any admission or concession of liability or any wrongdoing by Defendant or any Releasee.

19. Without affecting the finality of this judgment, the Court retains exclusive jurisdiction of this Settlement, including the administration and consummation of the Settlement.

20. The Court finds, pursuant to Rule 54(b) of the South Carolina Rules of Civil Procedure, that there is no just reason for delay in the entry of this Order and Final Judgment, and directs the Clerk to immediately enter this Order and Final Judgment, dismissing the claims of the Representative Plaintiff and Class against Santee Cooper with prejudice.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
The Honorable Diane S. Goodstein  
Business Court Judge



**EXHIBIT C**

**TO THE SETTLEMENT**

**AGREEMENT**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
George M. Hearn Jr., on behalf of	)	Civil Action No. 2017-CP-26-5256
himself and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b><u>NOTICE PLAN</u></b>
	)	
South Carolina Public Service Authority	)	
d/b/a Santee Cooper,	)	
	)	
Defendant.	)	
	)	

---

RG/2 Claims Administration (“Settlement Administrator”) submits the following plan to notify Settlement Class members of the Settlement and certification of a settlement class (“Settlement Class” or “Class”) in the above-entitled action.

**1. Direct Mail/E-Mail Notice**

The principal means of notifying the Class shall be direct notice. Santee Cooper has provided to Class Counsel and the Settlement Administrator information sufficient for the Settlement Administrator to distribute notice to the Settlement Class, including customer names, service addresses, billing addresses (if different), e-mail addresses (if available), account identification numbers, and the identification of Inactive Accounts of all Settlement Class members who were Santee Cooper customers between November 1, 2009 through February 28, 2021 (the “Settlement Class List”).

The Settlement Administrator shall prepare, print, and mail or e-mail the court-approved Summary Class Notice (the “Notice”), attached hereto as Exhibit 1, to all Settlement Class members on the Settlement Class List. The Settlement Administrator shall discharge its responsibility by e-mailing the Notice to each Settlement Class member for which an e-mail address is available and mailing the Notice via United States Postal Service (“USPS”) first-class mail to each Class Member for which an e-mail address is not available no later than \_\_\_\_\_ [35 days after Preliminary Approval Date]. The Notice shall provide information concerning the Settlement and the Settlement Class members’ opt-out and objection rights.

**A. Mailed Notice**

Prior to mailing, all mailing addresses will be checked against the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”). In addition, the addresses will be certified via the Coding Accuracy Support System to ensure the quality of the zip code and verified through Delivery Point Validation to verify the accuracy of the addresses.

Any mailed Notice returned to the Settlement Administrator as non-delivered shall be sent to the forwarding address affixed thereto via USPS first-class mail. If no forwarding address is provided, the Settlement Administrator shall undertake additional public record research using Accurint, a third-party lookup service maintained by LexisNexis. If an alternative address is located, the Notice shall be sent to such address via USPS first-class mail.

**B. E-Mailed Notice**

The e-mail Notice will be created using an embedded html text format to decrease the likelihood that the message will be blocked by Internet Service Providers and/or SPAM filters. Each e-mail Notice will be transmitted with a unique message identifier. If the receiving e-mail server cannot deliver the message, a “bounce code” will be returned along with the unique message identifier. For any e-mail Notice for which a bounce code is received indicating that the message was undeliverable, at least two additional attempts will be made to deliver the Notice by email.

For any e-mail Notice for which a bounce code is received indicating that the message was undeliverable after three attempts and a valid physical mailing address exists, a Notice will be sent via USPS first-class mail.

**2. Publication Notice**

Beginning no later than \_\_\_\_\_, [35 days after Preliminary Approval Date], the Settlement Administrator shall cause the Settlement Class Publication Notice, attached hereto as Exhibit 2, to be published in a weekday (Monday through Friday) edition of the following newspapers as an approximately 1/4 page ad unit: Charleston Post & Courier, Greenville News, Sun News (Myrtle Beach), Aiken Standard, Beaufort Gazette/Bluffton Island Packet, the State (Columbia), and the Rock Hill Herald.

**3. Website**

No later than \_\_\_\_\_, [35 days after Preliminary Approval Date], the Settlement Administrator shall launch an informational website to which Settlement Class members will be directed in the Notice and on which relevant documents and information will be posted, including the Detailed Notice, attached hereto as Exhibit 3.

#### 4. **Toll-Free Line**

No later than \_\_\_\_\_, [35 days after Preliminary Approval Date], the Settlement Administrator shall establish a toll-free line to which Settlement Class members will be directed in the Notice and on which relevant information may be obtained or shared by Settlement Class members.

#### 5. **Requests for Exclusion or Objections**

Requests for exclusion must contain the following information: (1) the Settlement Class member's full name, current address, and telephone number; (2) the Person's residential or commercial service address(es); (3) the Settlement Class member's Santee Cooper Account number(s) as to which he or she seeks exclusion; (4) an unequivocal statement that the Settlement Class member intends to be excluded from the Settlement Class and to forgo all rights and benefits of the Settlement; and (5) the Person's signature. All requests for exclusion must be returned to the Settlement Administrator and post-marked no later than \_\_\_\_\_ (45 days after Date of Notice).

Objections must include the following information: (1) the Class Member's full name, current address, and telephone number; (2) the Class Member's residential or commercial service address(es); (3) the Class Member's Santee Cooper Account number(s); (4) all specific objections and the reasons in support thereof, and any and all supporting papers; and (5) state whether the Class Member or his or her counsel will appear at the Final Approval Hearing.

If a Class Member intends to object through counsel, the Class Member's attorney must append a list of all prior objections previously filed by such counsel in state and federal courts, and with respect to each, provide (1) the case number; (2) the court where the prior objection was filed; and (3) the outcome of the objection.

All objections must be filed with the Court and served upon Class Counsel and Defendant's Counsel at the addresses in the Class Notice simultaneously no later than \_\_\_\_\_ (45 days after Date of Notice).

**William W. Wickersham, Esq.**  
Senior Vice President  
1540 Broadway  
New York, NY 10036-4086  
www.rg2claims.com

**EXHIBIT 1**

**TO THE NOTICE PLAN**

**If you were a residential or business retail customer of Santee Cooper at any time between November 1, 2009 and February 28, 2021, a class action lawsuit may affect your rights.**

*A court authorized this notice. This is not a solicitation.*

A proposed Settlement of a lawsuit against the South Carolina Public Service Authority (“Santee Cooper”) may affect your rights. In the lawsuit the Plaintiff alleges that residential and business retail customers of Santee Cooper paid increased and improper utility rates in connection with the permitting and construction of coal-fired generation facilities at the Pee Dee Energy Campus (the “Pee Dee Project”) that were not completed. Santee Cooper denies any wrongdoing but has agreed to settle. The Class Action Settlement resolves all claims in the lawsuit.

**This Notice advises you of your rights with respect to the proposed settlement, including the process for receiving payment, your right to exclude yourself from the settlement, and your right to object to the settlement. The Horry County, South Carolina, Court of Common Pleas authorized this Notice.**

**Who is Included?** On **XXXXXXXXXX**, 2021, the Court preliminarily certified the following Settlement Class:

All residential and business retail customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 to February 28, 2021.

This Notice is being sent to you because you are believed to be a member of this Class. Based on Santee Cooper’s records, you were a residential or business retail customer and paid costs for the Pee Dee Project as part of your Santee Cooper electric bills during the stated time period.

**What Does the Settlement Provide?** Pursuant to the proposed Settlement, in exchange for dismissal of this action and release of claims known and unknown against Santee Cooper, Santee Cooper will pay twelve million five hundred thousand dollars (\$12,500,000.00) in cash (the “Settlement Benefit”).

Distributions from the Settlement Benefit will be made to Class Members after deducting attorneys’ fees and litigation expenses approved by the Court, an incentive award to the Representative Plaintiff approved by the Court, and certain administrative and other costs and expenses as specified in the Settlement Agreement. All Class Members are entitled to receive a minimum payment or billing credit of \$5.00, and the remaining Settlement Benefit will be allocated in proportion to the amount the Class Member is estimated to have paid toward the Pee Dee Project. Distributions will be made by check to all former customers and to current customers who will receive \$200 or more, and distributions will be made by bill credit to current customers who will receive less than \$200.

**How Do You Get Benefits from the Settlement?** Class Members entitled to receive a benefit do not need to do anything to receive benefits from the Settlement.

**What Are My Other Options?** If you do not want to be a part of the Settlement, you must exclude yourself (“opt out”) by \_\_\_\_\_. If you opt out, you will not receive any payments or bill credits from the Settlement, you may not file an objection to the Settlement, you will not be bound by any judgment in this lawsuit, whether favorable or unfavorable, and you may attempt to pursue

QUESTIONS? CALL OR VISIT

any claims you have against Santee Cooper at your own risk and expense by filing your own lawsuit. If you stay in the Class, you have the right to object to the fairness of any aspect of the proposed Settlement by \_\_\_\_\_. For instructions on opting out or objecting to the Settlement, view the detailed written notice available at [www.\\_\\_\\_\\_\\_](http://www._____) or call \_\_\_\_\_.

**Final Hearing and Judgment of the Court.** The Court will hold a hearing to consider the fairness and adequacy of this proposed Settlement and to consider Class Counsel's Motion for Attorneys' Fees and Expenses on \_\_\_\_\_ at the Dorchester County Courthouse, 5200 E. Jim Bilton Boulevard, St. George, SC 29477 or via Webex or other video conferencing means and in compliance with any Standing Order regarding COVID-19. At this hearing, the Court will determine whether the Settlement Class was properly certified and whether the Settlement is fair, adequate, and reasonable and should be finally approved, with judgment entered accordingly. You or your own lawyer, if you have one, are welcome to attend the hearing at your own expense, but your attendance is not necessary.

Class Counsel intend to file a motion for attorneys' fees to be paid from the Settlement Benefit in an amount not to exceed thirty-three and one-third (33.33)% of the Settlement Benefit and expenses advanced by Class Counsel to be paid from the Settlement Benefit in an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_). Class Counsel's Motion for Attorneys' Fees and Expenses must be approved by the Court. Class Counsel will also seek approval of an incentive award to the Representative Plaintiff in the amount of ten thousand dollars (\$10,000.00) to recognize the Representative Plaintiff's time, energy, and commitment during the litigation.

The descriptions in this Notice are only summaries. If you have any questions or would like more information, including the detailed notice, please contact the Settlement Administrator by phone at \_\_\_\_\_, by e-mail at \_\_\_\_\_, or via \_\_\_\_\_. You may also consult with your own attorney.

Please do not call the Judge, Clerk, or Court about this Notice or lawsuit. They will not be able to give you advice or answer your questions.

**EXHIBIT 2**

**TO THE NOTICE PLAN**



**LEGAL NOTICE****If you were a residential or business retail customer of Santee Cooper at any time between November 1, 2009 and February 28, 2021, a class action settlement may affect your rights.**

A settlement of a class action lawsuit affects you if, for any time between November 1, 2009 to February 28, 2021, you were a residential or business retail customer of the South Carolina Public Service Authority (“Santee Cooper”) and had an Account with Santee Cooper. The settlement provides a Settlement Benefit to Class Members, which includes attorneys’ fees and costs of the litigation, administration and related costs, and the Representative Plaintiff’s incentive award. The Horry County, South Carolina, Court of Common Pleas authorized this notice. The Court will have a hearing to consider whether to approve the settlement, so that the Settlement Benefit may be provided.

**Who Is Affected?**

All residential or business retail customers of Santee Cooper who had Accounts with, and received power and energy from, Santee Cooper at some time between November 1, 2009 and February 28, 2021.

**What Is This About?**

The lawsuit claimed that Santee Cooper charged increased and improper utility rates to its residential and business retail customers in connection with the permitting and construction of coal-fired generation facilities at the Pee Dee Energy Campus (the “Pee Dee Project”) that were not completed. The Settlement is not an admission of wrongdoing or an indication that any law was violated.

The Settlement Administrator has mailed a Summary Class Notice to all Settlement Class members for whom it has current addresses. If you think you are a Settlement Class member and you did not receive the Notice, or for a fuller description of the Settlement, call \_\_\_\_\_ or visit [[class admin. website](#)] to request more information.

**What Can You Receive from the Settlement?**

Santee Cooper will pay twelve million five hundred thousand dollars (\$12,500,000.00) in settlement of all claims. The Settlement Benefit, less attorneys’ fees and expenses, the Representative Plaintiff’s incentive award,

and certain administrative and other costs and expenses specified in the Settlement Agreement, will be divided among all Class Members and distributed by check or billing credit to Class Members who do not exclude themselves from the Class. Class Members will receive a minimum of \$5.00. Distributions above the minimum payment will depend on the amount of energy used and the estimated amount paid toward the Pee Dee Project.

**How Do You Get a Benefit?**

If you are a Class Member, you do not need to do anything to receive a check or billing credit.

**What Are Your Options?**

If you don’t want a check or billing credit of \$5.00 or more, or you don’t want to be legally bound by the settlement, you must exclude yourself by \_\_\_\_\_. If you exclude yourself, you won’t get a check or billing credit from this Settlement. If you stay in the Class, you may object to the settlement by \_\_\_\_\_.

**Final Hearing and Judgment.**

A hearing in this case will be held on \_\_\_\_\_, at XX:00 a.m, at the Dorchester County Courthouse in St. George, SC, or via videoconferencing means that comply with South Carolina Courts’ Standing Order regarding COVID-19, to consider whether to approve the Settlement. You may appear at the hearing, but you do not have to. For more details, call or write to the Settlement Administrator or visit \_\_\_\_\_.

*Hearn v. South Carolina Public Service Authority d/b/a Santee Cooper, Case No. 2017-CP-26-5256*

If you have questions, call \_\_\_\_\_

or write to \_\_\_\_\_,

\_\_\_\_\_ [INSERT WEBSITE ADDRESS] \_\_\_\_\_

**EXHIBIT 3**

**TO THE NOTICE PLAN**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FIFTEENTH JUDICIAL CIRCUIT  
COUNTY OF HORRY ) **BUSINESS COURT**

George M. Hearn Jr., on Behalf of ) Civil Action No. 2017-CP-26-05256  
Himself and All Others Similarly )  
Situating, )  
 )  
 )  
Plaintiffs, )

vs. )

**NOTICE OF PROPOSED  
CLASS ACTION SETTLEMENT**

South Carolina Public Service Authority )  
d/b/a Santee Cooper, )  
 )  
 )  
Defendant. )

**If you were a residential or business retail customer of Santee Cooper at any time between November 1, 2009 and February 28, 2021, a class action lawsuit may affect your rights.**

*A state court authorized this notice. This notice is not a solicitation from a lawyer. You are not being sued.*

This Notice informs you of a proposed Settlement of a class action lawsuit against South Carolina Public Service Authority (“Santee Cooper”), in which Plaintiff claims Santee Cooper customers paid increased and improper utility rates in connection with the permitting and construction of two coal-fired generation facilities that were not completed at the Pee Dee Energy Campus (the “Pee Dee Project”). Santee Cooper denies any wrongdoing but has agreed to settle.

**I. SUMMARY**

**This Notice is to inform you of this proposed class action Settlement, alert you that you have been identified as a member of the Settlement Class preliminarily certified by the Court, and advise you of your rights with respect to the proposed Settlement, including your right to receive a payment, exclude yourself from the Settlement, and object to the Settlement.**

The Settlement avoids costs and risks to the Class from continuing the lawsuit, offers payments or billing credits to Class Members, and releases Santee Cooper from liability in exchange for Santee Cooper’s payment of \$12.5 million (the “Settlement Benefit”). If the Settlement is approved by the Court, the Settlement Benefit will be distributed to Class Members after a deduction of attorneys’ fees and litigation costs and expenses approved by the Court, administrative and other costs and expenses as specified in the Settlement Agreement, and the Representative Plaintiff’s incentive award approved by the Court. The Settlement Class includes all residential and business retail customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper at any time between November 1, 2009 and February 28, 2021 (the “Class Period”). If you have more than one Account, you may have received more than one Notice.

QUESTIONS? CALL \_\_\_\_\_ OR VISIT \_\_\_\_\_

Read this notice carefully. It explains your legal rights, options, and the deadlines to exercise your rights and options. You have the following options:

- **Stay in the class:** You may qualify for a billing credit or payment if the settlement is approved. You do not have to take any action to receive this benefit.
- **Exclude yourself:** You may exclude yourself or “opt out” of the Class. If you opt out, you will not receive a billing credit or payment, and your right to bring your own lawsuit related to the same subject matter will not be affected by the Settlement.
- **Go to a hearing:** If you do not opt out, you may ask to speak in Court about the fairness of the settlement.
- **Object:** If you do not opt out, you may submit a written objection in accordance with this Notice, informing the Court if you do not like the Settlement and explaining why.

To understand your options and how your rights will be affected, as well as the deadlines for action on your part, please read all of this Notice.

The Court overseeing this case still has to decide whether to approve the Settlement. Benefits will be provided to Class Members only if the Court approves the Settlement and after any appeals are resolved.

## II. BACKGROUND INFORMATION

**What is the lawsuit about?** Beginning in 2009, Santee Cooper’s Board of Directors approved revised rates applicable to its residential and business retail customers. Plaintiff alleges that as of November 1, 2009, Santee Cooper’s residential and business retail customers began paying increased and improper utility rates to cover costs related to the permitting and construction of the Pee Dee Project, which was cancelled and never completed. Santee Cooper denies any wrongdoing.

**What is a class action lawsuit?** In a class action, one or more people called “Plaintiff” or “Representative Plaintiff” (in this case, George M. Hearn, Jr.) sue on behalf of people who have similar claims. All these people are a “Settlement Class” or “Class.” The Representative Plaintiff has the duty to represent the interests of the Class, and may elect to settle the lawsuit on behalf of the Class, subject to court approval. The entity the Representative Plaintiff sued is called the Defendant (in this case, Santee Cooper). One court resolves the issues for the Representative Plaintiff and the Settlement Class, except for persons who may choose to exclude themselves from (or “opt out” of) the Settlement Class. This Notice is being provided because Santee Cooper has agreed to a proposed Settlement with the Settlement Class, and the Court has authorized this Notice and will hold a hearing to decide whether to issue an order approving the Settlement and ending the lawsuit.

**Why is there a settlement in this case?** The Court did not decide in favor of the Representative Plaintiff or Santee Cooper, and Santee Cooper denies any wrongdoing. Instead, both sides agreed to the Settlement to avoid the cost of continued litigation and a trial and to finally resolve the claims asserted in the lawsuit. The Representative Plaintiff and the attorneys think the settlement is in the best interests of the Class.

## III. WHO IS IN THE SETTLEMENT?

**How do I know if I am a part of the settlement?** On \_\_\_\_\_, 2021, the Court preliminarily certified the following Settlement Class:

All residential and business retail customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 to February 28, 2021.

QUESTIONS? CALL \_\_\_\_\_ OR VISIT \_\_\_\_\_

This Notice is being sent to you because Santee Cooper's records indicate that you were a residential or business retail customer and paid costs for the Pee Dee Project as part of your electric bills from Santee Cooper during the Class Period.

#### IV. THE SETTLEMENT BENEFIT—WHAT YOU RECEIVE AND HOW YOU RECEIVE IT

**What does the settlement provide?** Santee Cooper has agreed to pay twelve million five hundred thousand dollars (\$12,500,000.00) in exchange for the release and dismissal of claims of the Representative Plaintiff and Class. The Settlement Benefit will be used to fund payments and billing credits to Class Members and to pay attorneys' fees and litigation costs and expenses, Representative Plaintiff's incentive award approved by the Court, and administrative and other costs and expenses as specified in the Settlement Agreement. Class Counsel will seek approval of an incentive award to the Representative Plaintiff in the amount of ten thousand dollars (\$10,000.00) to recognize the Representative Plaintiff's time, energy, and commitment during the litigation.

**What will I receive from the Settlement?** Class Members will receive a minimum of \$5.00, and possibly more, depending on the proportion of Pee Dee Project costs the Class Member is estimated to have paid, and this monetary benefit will be provided either by billing credit or by check.

**How will I receive the benefits of the Settlement?** The Class includes both former customers (persons who do not have an Active Account with Santee Cooper) and current customers (persons who have an Active Account with Santee Cooper). Class Members who are former customers will be sent a check. Class Members who are current customers will be provided a billing credit, unless they are entitled to receive \$200 or more, in which case a check will be sent.

**How can I receive the benefits provided by the Settlement?** Class Members do not need to do anything to receive a billing credit or check as provided by the Settlement.

**When will I receive the benefits provided by the Settlement?** The Court will hold a hearing on [INSERT FINAL APPROVAL HEARING DATE] to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. The Settlement Benefit will not be distributed to Class Members unless and until the Settlement is approved by the Court and any appeals have been fully and finally resolved in favor of the Settlement. The outcome of an appeal is uncertain and resolving it can take time.

**What am I giving up by staying in the Class to receive the benefits provided by the Settlement?** Unless you opt out, you are staying in the Class, which will mean that you cannot sue, continue to sue, or be part of any other lawsuit against Santee Cooper about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. Staying in the Class means you are releasing all past, present, or future claims against Santee Cooper that were raised or could have been raised by or on behalf of the Class Members in relation to the subject matter of the Complaint, which includes claims relating to: (1) the Pee Dee Project, including but not limited to the recovery of costs and related debt service through rates or charges to customers; (2) any act or omission of Santee Cooper arising out of, relating to, or in any way regarding the Pee Dee Project, the adoption and implementation of rates during the Class Period, or other facts that were or could have been alleged in the Action; (3) Santee Cooper's rates and charges, including but not limited to those charged to customers to recover the costs of the Pee Dee Project and related debt service, Class Members' payment of such rates and charges, and any act or omission of Santee Cooper related thereto; and (4) any act or omission of Santee Cooper that was or could have been alleged

in this or another action directly, representatively, derivatively, or in any other capacity in another court, tribunal, or other forum regarding the Pee Dee Project and related debt service, rates, or charges.

## V. EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive a benefit from this Settlement and do not want the Settlement to affect your right to sue or continue to sue Santee Cooper, on your own, about the legal issues in this case, then you must take steps to get out. This is called “opting out” or excluding yourself from the Settlement Class. If you opt out, your rights will not be affected by the Settlement, and you will not receive a billing credit or payment.

**How do I get out of the settlement?** To exclude yourself from the settlement, you must complete and mail a request for exclusion to the Settlement Administrator. You must provide the following information in your request for exclusion: (1) the Settlement Class member’s full name, current address, and telephone number; (2) the Settlement Class member’s residential or commercial service address(es); (3) the Settlement Class member’s Santee Cooper Account number(s) as to which he or she seeks exclusion; (4) an unequivocal statement that the Settlement Class member intends to be excluded from the Settlement Class and to forgo all rights and benefits of the Settlement; and (5) the Settlement Class member’s signature.

If you exclude yourself, you will not receive any of the settlement benefits, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue Santee Cooper in the future. You cannot exclude others, and no one else can exclude you.

A Request for Exclusion Form is available at \_\_\_\_\_ for your convenience. You must mail or deliver your Request for Exclusion to:

[Administrator Information]

**To be effective, the Request for Exclusion must be completed, signed, and postmarked or delivered no later than \_\_\_\_\_ (45 days after Date of Notice).**

**If I do not exclude myself, may I sue Defendant later about these claims?** No. Unless you exclude yourself, you give up the right to sue Santee Cooper for the claims this settlement resolves.

**If I exclude myself, can I receive benefits from this settlement?** No. If you exclude yourself, you will not be able to receive either any portion of the Settlement Benefit.

## VI. OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

**How do I object to the Settlement?** If you are a Class Member, meaning that you have not requested exclusion from the Class, you have the right to object to the fairness of any aspect of the proposed Settlement. If you wish to object, you must file with the Court a **written** statement containing objection(s) specifically referring to *George M. Hearn, Jr., on Behalf of Himself and All Others Similarly Situated v. South Carolina Public Service Authority*, Civil Action No. 2017-CP-26-5256. All objections must include the following information: (1) the Class Member’s full name, current address, and telephone number; (2) the Class Member’s residential or commercial service address(es); (3) the Class Member’s Santee Cooper Account number(s); (4) all specific objections and the reasons in support thereof, and any and all supporting papers; and (5) a statement of whether the Class Member or his or her counsel will appear at the Final Approval Hearing. If a Class Member intends to object through counsel, the Class Member’s attorney must

QUESTIONS? CALL \_\_\_\_\_ OR VISIT \_\_\_\_\_



append a list of all prior objections previously filed by such counsel in state and federal courts, and with respect to each, provide (1) the case number; (2) the court where the prior objection was filed; and (3) the outcome of the objection. If a Class Member intends to appear and requests to be heard, either individually or through counsel, the Class Member or his or her counsel must file a notice of appearance with the Court no later than fourteen (14) Days before the Final Approval Hearing.

Any Class Member who does not properly file and serve a timely written objection to the Settlement shall not be permitted to object to the Settlement at the Final Approval Hearing and shall be foreclosed from seeking review of the Settlement by appeal, collateral attack, or otherwise.

<b>Clerk's Office</b>	<b>Representative for Class Counsel</b>	<b>Representative Counsel for Defendant</b>
Horry County Clerk of Court Horry County Government Center 1301 2nd Avenue Conway, SC 29526	Daniel Haltiwanger Richardson, Thomas, Haltiwanger, Moore & Lewis, LLC 1513 Hampton Street Columbia, SC 29205	B. Rush Smith III Nelson Mullins Riley & Scarborough, LLP 1320 Main Street, 17th Floor Columbia, SC 29201

**PLEASE DO NOT CALL THE COURT. To be effective, the objection must be postmarked or delivered to the Court and Counsel no later than \_\_\_\_\_** (no later than 45 days after Date of Notice).

**What is the difference between objecting and excluding?** Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you do not exclude yourself, and then do not object or somehow do not meet the requirements for objecting, you cannot later challenge the settlement by appeal or any other way.

## VII. THE LAWYERS REPRESENTING YOU

**Do I have a lawyer in this case?** The following lawyers represent you and other Settlement Class Members in this case: Daniel S. Haltiwanger, William C. Lewis, and Brady R. Thomas of Richardson, Thomas, Haltiwanger, Moore & Lewis, LLC; Matthew A. Nickles of Rogers Patrick Westbrook & Brickman, LLC; Jack G. Gresh and Lauren S. Gresh of Hall Booth Smith, P.C.; and L. Morgan Martin of L. Morgan Martin, P.A. Together, these lawyers are called Class Counsel.

**How will the lawyers be paid?** Class Counsel will ask the Court for attorneys' fees up to thirty-three and one-third (33.33)%. The Court may award less than this amount. Class counsel will also seek to recover litigation expenses. The attorneys' fees and expenses will be paid from the Settlement Benefit.

## VIII. THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to do so.

**When and where will the Court decide whether to approve the settlement?** The Court will hold a Final Approval Hearing at [TIME AND DATE], at the Dorchester County Courthouse, 5200 E. Jim Bilton Boulevard, St. George, SC 29477 or via Webex or other video conferencing means and in compliance with any Standing Order regarding COVID-19. At this hearing, the Court will consider whether the settlement

QUESTIONS? CALL \_\_\_\_\_ OR VISIT \_\_\_\_\_

is fair, reasonable, and adequate, and will consider Class Counsel's Motion for Attorneys' Fees, Expenses, and Class Representative Incentive Award. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement.

**Do I have to come to the hearing?** No, Class Counsel will answer questions from the Court. If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time and it meets the requirements described in this Notice, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**May I speak at the hearing?** If a Class Member intends to appear and requests to be heard, either individually or through counsel, the Class Member or his or her counsel must file a notice of appearance with the Court no later than fourteen (14) Days before the Final Approval Hearing.

## IX. IF YOU DO NOTHING

**What happens if I do nothing at all?** Class Members who do nothing will be included in the Class and will receive a portion of the Settlement Benefit when distributions are made, in the form of either a billing credit or check. Class Members who do not opt out will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Santee Cooper about the legal issues in this case.

## X. FREQUENTLY ASKED QUESTIONS

**What if my address changed?** If your mailing address has changed, or is expected to change in the future, or if you received the Summary Class Notice at an address other than that listed on the envelope, you should send your new mailing address to the Settlement Administrator at:

[\[Settlement Administrator Info\]](#)

**Where can I get more information?** The descriptions in this Notice of the claims and Settlement documents in this case are only summaries. If you have any questions or would like more information, please contact the Settlement Administrator by phone at \_\_\_\_\_; by e-mail at \_\_\_\_\_; or via \_\_\_\_\_. You may also consult with your own attorney.

The Settlement Agreement and all other documents filed in this lawsuit may be reviewed and copied at the Dorchester County Courthouse, 5200 E. Jim Bilton Boulevard, St. George, SC 29477. You may also view the Settlement Agreement and other Settlement related documents at \_\_\_\_\_.

**Please do not call the Judge, Clerk, or Court about this Notice or lawsuit.**

**They will not be able to give you advice or answer your questions.**



**EXHIBIT D**

**TO THE SETTLEMENT**

**AGREEMENT**

STATE OF SOUTH CAROLINA )  
)  
)  
)  
)  
COUNTY OF HORRY )  
)  
)  
George M. Hearn, Jr., on Behalf of Himself and )  
All other Similarly Situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
South Carolina Public Service Authority d/b/a )  
Santee Cooper, )  
)  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
**BUSINESS COURT**

Civil Action No. 2017-CP-26-05256

**ORDER GRANTING CLASS  
CERTIFICATION AND  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

On \_\_\_\_\_, 2021, Plaintiff filed a Motion for Preliminary Approval for a class action settlement with Defendant, South Carolina Public Service Authority (“Santee Cooper”). The Court, having reviewed the Motion for Preliminary Approval, the Settlement Agreement, the pleadings, and other papers on file in this action, hereby finds that the Motion should be GRANTED.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For purposes of this Order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the parties’ Settlement Agreement (“Alternatively identified herein as “Settlement” or “Agreement”).
2. The Court hereby gives its preliminary approval to the proposed Settlement and will schedule a hearing on the final approval of the proposed Settlement.
3. Pursuant to Rule 23, South Carolina Rules of Civil Procedure, the Court provisionally certifies, for settlement purposes only, a class of all residential and business retail

customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 and February 28, 2021.

4. The Court further provisionally finds that, for settlement purposes only, the prerequisites to a class action under Rule 23, SCRCF are satisfied in that:

- a. the number of class members is so great that the joinder of all members impracticable;
- b. there are questions of law and fact common to the class;
- c. the claims or defenses of the proposed class representative are typical of the claims or defenses of the class;
- d. the proposed class representative will fairly and adequately protect the interests of the class, and has retained counsel experienced in class action litigation who have, and will continue to, adequately represent the class;
- e. questions of law or fact common to class members predominate over any questions affecting only individual members; and
- f. the amount in controversy for each class member exceeds one hundred dollars (\$100.00).

5. The Court preliminarily finds that the proposed Settlement falls within the range of possible final approval and is fair, adequate, and reasonable for the class. The Court further finds that there is a sufficient basis for notifying the members of the class of the proposed Settlement Class and to schedule a final hearing.

6. The Court provisionally approves the Distribution Plan, subject to final approval of the Settlement.

7. The Court provisionally appoints George M. Hearn, Jr. as class representative.

8. The Court appoints Daniel S. Haltiwanger, William C. Lewis, and Brady R. Thomas of Richardson, Thomas, Haltiwanger, Moore & Lewis, LLC; Matthew A. Nickles of Rogers, Patrick, Westbrook & Brickman, LLC; Jack G. Gresh and Lauren S. Gresh of Hall Booth Smith, P.C.; and L. Morgan Martin, P.A as Class Counsel.

9. The Court approves the proposed means for Notice to the class as defined in the Agreement and described in the Notice Plan.

10. The Court approves the format and content of the Notice attached to the Agreement as the means to provide notification of the Settlement to members of the class.

11. Having considered the manner of giving notice to class members as described in the Agreement, the Court finds that the Notice as set forth (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the class members of the proposed Settlement and of their right to object or to exclude themselves as provided in the Agreement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meets all applicable requirements of due process.

12. As provided in the Agreement, each member of the class will have the right to be excluded from the Settlement Class by mailing a request for exclusion (“Successful Opt-Out”). In order to become a Successful Opt-Out, a Person who meets the definition of the Settlement Class must complete and mail a request for exclusion to the Settlement Administrator prior to the Exclusion Deadline. A request for exclusion shall be valid and treated as a Successful Opt-Out if the exclusion request includes the following information: (1) the Person’s full name, current address, and telephone number; (2) the Person’s residential or commercial service address(es); (3) the Person’s Santee Cooper Account number(s) as to which he or she seeks exclusion; (4) an unequivocal statement that the Person intends to be excluded from the Settlement Class and to

forgo all rights and benefits of the Agreement; and (5) the Person's signature. Successful Opt-Outs may opt out of the Settlement Class only on an individual basis; so-called mass or class opt-outs shall not be allowed and shall be of no force or effect. A Person acting pursuant to a legal power of attorney, however, may request exclusion of an individual. Class Counsel shall cause copies of requests for exclusion to be provided to Defendant's Counsel.

13. As provided in the Agreement RG/2 Claims Administration is appointed as the Settlement Administrator and shall have responsibility for providing Notice to the Settlement Class and administering the Settlement as set forth in the Agreement.

14. Any class member who excludes himself or herself from the Class may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement.

15. No later than fourteen (14) Days after the Exclusion Deadline, Class Counsel shall provide to Defendant's Counsel a complete and final list of Successful Opt-Outs and copies of the requests for exclusion.

16. Class Members who wish to object to any aspect of the Settlement must serve a written objection to the Settlement ("Objection") upon Class Counsel and Defendant's Counsel at the addresses in the Class Notice and file the Objection simultaneously with the Court prior to the Objection Deadline. All Objections must include the following information: (1) the Class Member's full name, current address, and telephone number; (2) the Class Member's residential or commercial service address(es); (3) the Class Member's Santee Cooper Account number(s); (4) all specific objections and the reasons in support thereof, and any and all supporting papers; and (5) a statement of whether the Class Member or his or her counsel will appear at the Final Approval Hearing. If a Class Member intends to object through counsel, the Class Member's attorney must append a list

of all prior objections previously filed by such counsel in state and federal courts, and with respect to each, provide (1) the case number; (2) the court where the prior objection was filed; and (3) the outcome of the objection. If a Class Member intends to appear and requests to be heard, either individually or through counsel, the Class Member or his or her counsel must file a notice of appearance no later than fourteen (14) Days before the Final Approval Hearing. Any Class Member who does not submit a timely Objection in accordance with this Agreement and orders of the Court, shall not be treated as having filed a valid Objection to the Settlement.

17. The Court will conduct the Final Approval Hearing on \_\_\_\_\_, at **:00 a.m./p.m., in Dorchester County, South Carolina.** The Final Approval Hearing will be conducted to determine the following:

- a. Whether the proposed Settlement is fair, reasonable, and adequate and should be granted final approval;
- b. Whether final judgment should be entered dismissing all claims in this case with prejudice as required by the Settlement;
- c. Whether attorneys' fees, expenses, and costs should be awarded and, if so, the amount to be awarded;
- d. Whether an incentive award should be awarded to the proposed class representative and, if so, the amount to be awarded;
- e. Whether a class should be certified for settlement purposes only; and
- f. Such other matters as the Court may deem appropriate.

18. The Court has and retains exclusive jurisdiction over this action to consider all further matters arising out of or connected to the proposed Settlement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
The Honorable Diane S. Goodstein  
Business Court Judge

**EXHIBIT B**

**TO THE MOTION FOR  
PRELIMINARY APPROVAL**



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
	)	<b><u>BUSINESS COURT</u></b>
COUNTY OF HORRY	)	Civil Action No. 2017-CP-26-05256
George M. Hearn, Jr., on Behalf of Himself and All other Similarly Situated,	)	
	)	
Plaintiffs,	)	<b>ORDER GRANTING CLASS</b>
	)	<b>CERTIFICATION AND</b>
	)	<b>PRELIMINARY APPROVAL OF</b>
	)	<b>CLASS ACTION SETTLEMENT</b>
v.	)	
	)	
South Carolina Public Service Authority d/b/a Santee Cooper,	)	
	)	
Defendant.	)	
_____	)	

On \_\_\_\_\_, 2021, Plaintiff filed a Motion for Preliminary Approval for a class action settlement with Defendant, South Carolina Public Service Authority (“Santee Cooper”). The Court, having reviewed the Motion for Preliminary Approval, the Settlement Agreement, the pleadings, and other papers on file in this action, hereby finds that the Motion should be GRANTED.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For purposes of this Order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the parties’ Settlement Agreement (“Alternatively identified herein as “Settlement” or “Agreement”).
2. The Court hereby gives its preliminary approval to the proposed Settlement and will schedule a hearing on the final approval of the proposed Settlement.
3. Pursuant to Rule 23, South Carolina Rules of Civil Procedure, the Court provisionally certifies, for settlement purposes only, a class of all residential and business retail

customers who received power and energy from Santee Cooper and who had Accounts with Santee Cooper between November 1, 2009 and February 28, 2021.

4. The Court further provisionally finds that, for settlement purposes only, the prerequisites to a class action under Rule 23, SCRCF are satisfied in that:

a. the number of class members is so great that the joinder of all members impracticable;

b. there are questions of law and fact common to the class;

c. the claims or defenses of the proposed class representative are typical of the claims or defenses of the class;

d. the proposed class representative will fairly and adequately protect the interests of the class, and has retained counsel experienced in class action litigation who have, and will continue to, adequately represent the class;

e. questions of law or fact common to class members predominate over any questions affecting only individual members; and

f. the amount in controversy for each class member exceeds one hundred dollars (\$100.00).

5. The Court preliminarily finds that the proposed Settlement falls within the range of possible final approval and is fair, adequate, and reasonable for the class. The Court further finds that there is a sufficient basis for notifying the members of the class of the proposed Settlement Class and to schedule a final hearing.

6. The Court provisionally approves the Distribution Plan, subject to final approval of the Settlement.

7. The Court provisionally appoints George M. Hearn, Jr. as class representative.

8. The Court appoints Daniel S. Haltiwanger, William C. Lewis, and Brady R. Thomas of Richardson, Thomas, Haltiwanger, Moore & Lewis, LLC; Matthew A. Nickles of Rogers, Patrick, Westbrook & Brickman, LLC; Jack G. Gresh and Lauren S. Gresh of Hall Booth Smith, P.C.; and L. Morgan Martin, P.A as Class Counsel.

9. The Court approves the proposed means for Notice to the class as defined in the Agreement and described in the Notice Plan.

10. The Court approves the format and content of the Notice attached to the Agreement as the means to provide notification of the Settlement to members of the class.

11. Having considered the manner of giving notice to class members as described in the Agreement, the Court finds that the Notice as set forth (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the class members of the proposed Settlement and of their right to object or to exclude themselves as provided in the Agreement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meets all applicable requirements of due process.

12. As provided in the Agreement, each member of the class will have the right to be excluded from the Settlement Class by mailing a request for exclusion (“Successful Opt-Out”). In order to become a Successful Opt-Out, a Person who meets the definition of the Settlement Class must complete and mail a request for exclusion to the Settlement Administrator prior to the Exclusion Deadline. A request for exclusion shall be valid and treated as a Successful Opt-Out if the exclusion request includes the following information: (1) the Person’s full name, current address, and telephone number; (2) the Person’s residential or commercial service address(es); (3) the Person’s Santee Cooper Account number(s) as to which he or she seeks exclusion; (4) an unequivocal statement that the Person intends to be excluded from the Settlement Class and to

forgo all rights and benefits of the Agreement; and (5) the Person's signature. Successful Opt-Outs may opt out of the Settlement Class only on an individual basis; so-called mass or class opt-outs shall not be allowed and shall be of no force or effect. A Person acting pursuant to a legal power of attorney, however, may request exclusion of an individual. Class Counsel shall cause copies of requests for exclusion to be provided to Defendant's Counsel.

13. As provided in the Agreement RG/2 Claims Administration is appointed as the Settlement Administrator and shall have responsibility for providing Notice to the Settlement Class and administering the Settlement as set forth in the Agreement.

14. Any class member who excludes himself or herself from the Class may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement.

15. No later than fourteen (14) Days after the Exclusion Deadline, Class Counsel shall provide to Defendant's Counsel a complete and final list of Successful Opt-Outs and copies of the requests for exclusion.

16. Class Members who wish to object to any aspect of the Settlement must serve a written objection to the Settlement ("Objection") upon Class Counsel and Defendant's Counsel at the addresses in the Class Notice and file the Objection simultaneously with the Court prior to the Objection Deadline. All Objections must include the following information: (1) the Class Member's full name, current address, and telephone number; (2) the Class Member's residential or commercial service address(es); (3) the Class Member's Santee Cooper Account number(s); (4) all specific objections and the reasons in support thereof, and any and all supporting papers; and (5) a statement of whether the Class Member or his or her counsel will appear at the Final Approval Hearing. If a Class Member intends to object through counsel, the Class Member's attorney must append a list

of all prior objections previously filed by such counsel in state and federal courts, and with respect to each, provide (1) the case number; (2) the court where the prior objection was filed; and (3) the outcome of the objection. If a Class Member intends to appear and requests to be heard, either individually or through counsel, the Class Member or his or her counsel must file a notice of appearance no later than fourteen (14) Days before the Final Approval Hearing. Any Class Member who does not submit a timely Objection in accordance with this Agreement and orders of the Court, shall not be treated as having filed a valid Objection to the Settlement.

17. The Court will conduct the Final Approval Hearing on \_\_\_\_\_, at :00 a.m./p.m., in **Dorchester County, South Carolina**. The Final Approval Hearing will be conducted to determine the following:

- a. Whether the proposed Settlement is fair, reasonable, and adequate and should be granted final approval;
- b. Whether final judgment should be entered dismissing all claims in this case with prejudice as required by the Settlement;
- c. Whether attorneys' fees, expenses, and costs should be awarded and, if so, the amount to be awarded;
- d. Whether an incentive award should be awarded to the proposed class representative and, if so, the amount to be awarded;
- e. Whether a class should be certified for settlement purposes only; and
- f. Such other matters as the Court may deem appropriate.

18. The Court has and retains exclusive jurisdiction over this action to consider all further matters arising out of or connected to the proposed Settlement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
The Honorable Diane S. Goodstein  
Business Court Judge