

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
Jessica S. Cook, et al.)	Civil Action No. 2019-CP-23-06675
)	
Plaintiffs,)	
)	<u>DEFENDANT SANTEE COOPER'S</u>
vs.)	<u>MOTION TO STRIKE OR</u>
)	<u>EXCLUDE FUTURE DAMAGES</u>
South Carolina Public Service Authority)	<u>CLAIMS</u>
(also known as Santee Cooper), et al.)	
)	
Defendants.)	

Defendant, South Carolina Public Service Authority (“Santee Cooper”), respectfully moves this Court for an Order striking claims for future damages or, alternatively, excluding such claims, reference to, and evidence or arguments about future damages or any mention of the same in the presence of the jury, on the following grounds:

1. By joint resolution of the General Assembly signed by the Governor on May 22, 2019 (hereinafter “Act 95,” attached hereto as Exhibit A), the State of South Carolina initiated a competitive bidding process for the sale of some or all of the South Carolina Public Service Authority, to receive management proposals that do not involve a sale of Santee Cooper, and to receive Santee Cooper’s proposal for the reform, restructuring, and changes in its operation as an alternative to a sale or management proposal. Among other things, the proposals to be considered by the General Assembly as it decides the future of Santee Cooper must include projections of rates to be charged to Santee Cooper customers. Thus, the very existence of Santee Cooper (a creature of statute) and the rates to be charged to Santee Cooper customers in the future are subject to debate and decision by the body that created the South Carolina Public Service Authority—the General Assembly of the State of South Carolina.

2. Additionally, as part of the Act 95 bidding process, each bidder must negotiate with Central to determine terms for a binding contract between Central and the bidding entity in the

event the entity's bid or proposal is successful. Bidders' proposals must also address the debt of Santee Cooper. For these and other reasons, any claim of future damages against Santee Cooper by nature would be conjectural and speculative and cannot be allowed in this action. Moreover, any interference by the courts with the actions undertaken by the legislature pursuant to Act 95 would interfere with the bidding process established therein, contravene the purposes of Act 95, and risk violating the separation of powers.

3. Further, Plaintiffs' Fifth Amended Complaint does not seek future damages. It alleges and seeks recovery of increased rates charged to and collected from class members. It seeks recovery only of damages suffered to date, comprising sums paid by customers of Santee Cooper and the electric cooperatives to pay for construction, debt service, and other pre-operational costs associated with V.C. Summer Units 2 and 3. These are the only damages alleged in the complaint. (*See Exhibit B – Excerpts of Fifth Amended Complaint/Damages Allegations*). Plaintiffs cannot recover damages that are not supported by the pleadings or at issue in the case. Moreover, the law does not allow for recovery of conjectural or speculative future damages.

For these reasons, and for such other reasons as may be presented to the Court in support of and in connection with this motion, Santee Cooper respectfully requests that this Court issue its Order (a) striking any claims seeking a jury verdict or award of future damages; (b) barring Plaintiffs from making any reference or allusion to, argument about, and any mention whatsoever of damages in excess of the dollar figure representing the rates actually charged to and paid by class members to date; (c) admonishing counsel that any mention of future damages in excess of the dollar figure representing rates actually charged to and paid by class counsel to date will be grounds for consideration of a mistrial.

Signature Page Follows

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