

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jessica S. Cook, Corrin F. Bowers & Son, Cyril
B. Rush, Jr., Bobby Bostick, Kyle Cook, Donna

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)
)

Cook v. Santee Cooper
South Carolina Public Service Authority
2021 Annual Compliance Report

INTRODUCTION

Pursuant to the Settlement Agreement (the “Settlement Agreement” or the “Agreement”) for *Cook v. Santee Cooper*, Case No. 2019-CP-23-6675, the South Carolina Public Service Authority (“Santee Cooper”) submits its 2021 Annual Compliance Report (the “2021 Report”). The Settlement Agreement requires Santee Cooper to provide an annual report to the Court and Central Electric Power Cooperative, Inc. (“Central”) by April 30 of each year through 2030, establishing Santee Cooper’s compliance with the terms and restrictions of sections IV.A and IV.B of the Agreement related to the Common Benefit Fund and Non-Cash Settlement (the “Rate Freeze”), respectively. (*See*

1. Change in Law – COVID-19 laws, orders, and other actions
2. Change in Law – Act 90, passed by the South Carolina General Assembly
3. Change in Law – Effluent Limit Guidelines (“ELG”) regulation revisions regarding Flue Gas Desulphurization by the United States Environmental Protection Agency (“EPA”)
4. Change in Law – Armed Services Board of Contract Appeals order regarding St. Stephen Rediversion Project and statement of position by Army Corp of Engineers
5. Fire – Foresight Coal Supply LLC Sugar Camp Mine Complex, and Change in Law pursuant to order of the Mine Health and Safety Administration
6. Catastrophic failure of equipment and Fire – V.C. Summer 1 Transformer Failure Fire
7. Named Storm – Tropical Storm Elsa
8. Central Load Deviation – More than 4% below Reform Plan

At present the listed Exceptions amount to \$71,023,135 for 2021. The Exceptions identified in the

Bekaert found “the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities and fiduciary activities of the Authority as of December 31, 2021 and 2020, and the respective changes in financial position and, where applicable, its cash flows for the years then-ended in accordance with accounting principles generally accepted in the United States of America.” (*Id.* at 12.) In addition to its audited annual financial statements, Santee Cooper identified records supporting compliance with Sections IV.A and IV.B of the Settlement Agreement, which are attached as exhibits.

II. Common Benefit Fund – Section IV.A

Section IV.A of the Settlement Agreement provides for a Common Benefit Fund to be funded by Santee Cooper and Dominion Energy, Inc. for the benefit of Class Members. Santee Cooper and Dominion agreed to make contributions to the Common Benefit Fund, with Santee Cooper’s contribution paid in annual installments of \$65 million in 2020, \$65 million in 2021, and \$70 million in 2022, each payable in the third quarter of the year. Santee Cooper agreed its contribution would not be included in its revenue requirements or otherwise passed on to its customers by way of increased rates or charges.

The Outline of Topics for the Annual Compliance Report identified the following items to be reported related to the Common Benefit Fund, each of which is addressed in this part of the Report:

1. Payment timely made by September 30th of 2020, 2021, and 2022
2. For 2021 report (assuming Effective Date about 60 days after Final Approval Hearing)¹:

¹ The Outline reflects that Santee Cooper will report on class allocation data and bill credits in its “2021 report.” (Outline of Report Topics at 2.) At the time of the Outline, the Parties had not addressed the nomenclature for the reports and later named the report to reflect the year being

- a. Class allocation data timely provided
- b. Bill credits timeline provided

3.

24, 2021. Santee Cooper utilized funds on hand to make the payment and debited the short-term liability (Account 2420) and credited cash (Account 1310). (*See* Recording of Second Installment, attached as Exhibit F). This entry was recorded to the balance sheet only, reducing an existing liability, and no costs or expenses were recovered or deferred as a result of recording the payment in this manner. (*Id.*)

III. Non-Cash Settlement – Settlement Agreement, Part IV.B

Section IV.B of the Agreement provided for Santee Cooper to implement “a rate freeze for the benefit of Class Members consistent with the rates projected in the Reform Plan, beginning in 2020 upon approval of the Agreement and extending through the end of 2024 (the “Rate Freeze Period”).” (Settlement Agreement, Part IV.B, at 21.) Schedule A to the Settlement Agreement identifies the fixed rate components and amounts chargeable to Central, and Schedule B lists the frozen rates and rate schedules for retail customers and municipal customers whose rates are based on Santee Cooper’s Municipal Light and Power rate. Further, Santee Cooper agreed “not to defer

1. For 2021 report, Board resolution addressing Rate Freeze²
2. Posting of frozen rates on web site – Frozen rate schedules and Schedule B
3. Rates frozen for Central and for Santee Cooper's Residential, Commercial, Lighting, and Industrial customers
4. If any exceptions occur, identification of potential instances of exceptions, including a description of the exception and the associated amount for that year
- 5.

21.) Schedule A of the Settlement Agreement identified the components of Central's rates that would be frozen as well as the amounts of those frozen rates. Schedule B identified the affected

2. Central Rate Freeze

The Rate Freeze was applied to Central's service for usage on and after August 1, 2020. Accordingly, the first invoice issued to Central for service on or after August 1, 2020, was its invoice dated September 2, 2020, for service rendered August 1 – August 31, 2020. Schedule A of the Settlement Agreement specified the frozen rate components for Central.

As reported in the 2020 Report, the frozen components of Central's rates were entered directly into the Central Billing System. Those components are the Supplemental Capacity Cost Rate, Supplemental Energy-Related Fixed Cost Rate, Supplemental Non-Fuel Fixed Cost Rate, Transmission Service Rate, Delivery Service Charge and the Monthly Supplemental Fuel Cost Rate from Schedule A of the Settlement Agreement. (*See* 2020 Report, Parts III.B.2 at 12 (attaching Central Billing Screenshots as Exhibit X).) Central's invoices from January 2021 to December 2021 showing rates consistent with Schedule A are attached. (*See* Central's 2021

Exception	Amount (Jan 1, 2021-Dec 31, 2021)
6. Catastrophic failure of equipment and Fire – VC Summer 1	\$ 5,590,376.93
7. Named Storm – Tropical Storm Elsa	\$ 175,069.99
8. Central Load Deviation – More than 4% below Reform Plan	\$ 15,449,000.00

Future events may affect the amounts listed above. In the future, Santee Cooper will update the Court regarding these Exceptions.

Santee Cooper monitored costs and expenses to ensure (1) costs and expenses were properly recorded in the appropriate time periods in accordance with Generally Accepted Accounting Principles, and (2) costs and expenses that did not qualify as an Exception were not deferred to periods outside of the Rate Freeze Period.

1. Change in Law – COVID-19

As noted in the 2020 Report and continuing through 2021, the coronavirus pandemic prompted a response from federal, state, and local levels of government. Legislation, executive orders, and emergency orders were enacted and extended. Santee Cooper incurred costs and expenses during the 2020 and 2021 Reporting Periods because of these changes in law.

Santee Cooper has a mechanism within its accounting system to track costs related to the coronavirus pandemic. The total amount incurred during the 2021 Reporting Period due to these changes in law was \$3,443,862.46. The categories of costs, amounts, and sources of law that led to the 2021 costs are described in the chart attached as Exhibit M, along with a report from the COVID-19 Project/Task subaccount. (See Chart of Costs from Changes in Law Related to COVID-19 and Chart of Tasks and Expenditures Under COVID-19 Project Subaccount, attached as Exhibit N.)

The total amount incurred during the 2020 Reporting Period was \$5.2 million.

the South Carolina General Assembly authorized it to undertake a diversion project that resulted in the construction of two reservoirs, Lake Marion and Lake Moultrie, and a hydroelectric plant, Jefferies Hydroelectric Station, to serve the rural South Carolina population. This original diversion project, however, created shoaling problems in the Charleston Harbor, which required the ACOE to dredge the Harbor annually.

To solve the shoaling issue, the United States Congress authorized construction of the Cooper River Rediversion Project at St. Stephen Hydroelectric Plant, by which the ACOE created a dam that rediverts water back to the Santee River. The St. Stephen Hydroelectric Plant, however, negatively impacted the generating capacity of the Jefferies Hydroelectric Station. As a compromise, the ACOE and Santee Cooper reached an agreement in 1976 by which the ACOE agreed to sell Santee Cooper power in compensation for decreasing the generation from Jefferies, and for Santee Cooper to receive power from the St. Stephen hydropower facility for 50 years. The financial obligations between the parties began once the unit reached commercial operation, which happened in 1985, and the compensation was based on a 30-year formula. The 30-year formula expired in 2015.

In 2015, the parties disputed whether Santee Cooper was obligated to pay the ACOE for capacity charges for the next 20 years. The ACOE's contract officer issued an opinion that Santee Cooper was obligated to pay capacity charge for the next twenty years. Santee Cooper appealed that decision before the ASBCA. The ASBCA issued its Order on July 22, 2020, holding that Santee Cooper was obligated to pay capacity charges for the next 20 years. The ASBCA directed the parties to negotiate to determine the amount Santee Cooper would pay.

On September 17, 2021, the ACOE informed Santee Cooper of the amounts it thought Santee Cooper owed for each year from 2015, which is \$55 million. (*See* Letter from Addison

Layfield, Contracting Officer, U.S. Army Corps of Engineers to S.C. Public Service Authority (Sept. 17, 2021), attached as Exhibit S.) The ACOE proposed to offset that total by amounts it is withholding from paying Santee Cooper, totaling \$24 million. (*Id.*) According to the ACOE, the

Authority (Sept. 13, 2021), attached as Exhibit X; *see also* Letter from Robert D. Moore, President, Foresight Coal Sales LLC to S.C. Public Service Authority (Dec. 23, 2021), attached as Exhibit Y.) As of December 31, 2021, the mines had not reopened.

On March 10, 2022, however, Foresight notified Santee Cooper that it was able to resume operations in the Viking portion of the mine, though the M-Class portion of Sugar Camp Complex was (and is) still closed. (*See* Letter from Robert D. Moore, President, Foresight Coal Sales LLC to S.C. Public Service Authority (Mar. 10, 2022), attached as Exhibit Z.) Santee Cooper since has received some coal from the Sugar Camp Complex but continues to not receive the full amount under the contract with Foresight.

In its August 21, 2021 letter, Foresight provided notice that the MSHA order was a force majeure event under Section 8.1 of its contract with Santee Cooper. (*See* August 21, 2021 Letter at 1.) Foresight explained that the MSHA order required withdrawal of all personnel from the underground mine area. (*Id.*) The entire area of the Viking and M-Class sections of the mine were subject to the MSHA order. (*Id.*; *see also* September 13, 2021 Letter and December 23, 2021 Letter.)

b.

Spot Purchase Report, attached as Exhibit AA.) These arrangements were not at the more favorable contract price that Santee Cooper would have received under its contract with Foresight. Further, Santee Cooper's coal stockpile was affected, lowering the amount of coal Santee Cooper keeps on hand to ensure system reliability.

While Santee Cooper was able to purchase some coal on the market to replace what it expected to receive from Foresight, these quantities were insufficient to generate the typical amount of power from the coal generating units that Santee Cooper relies on to meet customer needs. To manage this situation, Santee Cooper both made adjustments to how it utilized its own generation resources, including natural gas, and purchased more power from the market to make up the difference.

c. Financial Impact of Mine Closure

To quantify the costs to Santee Cooper directly resulting from the Sugar Camp fire and related MSHA order, Santee Cooper compared a model of how its system actually operated during

Letter”).)

Based on the assessment described in the nFront Letter, for the 2021 Reporting Period, Santee Cooper’s system energy costs as a result of the Sugar Camp Complex fire are \$37,828,343. Due to differences in various customer and contract provisions, Santee Cooper is evaluating the allocation and recovery mechanisms related to these costs and expects the amount that could be recovered in the future to be less than the amount for the full system. Santee Cooper will update the Court regarding the amount to be recovered in the future.

6. Catastrophic failure of equipment and Fire – VC Summer 1

a. Background on Event

On the evening of November 15, 2021, the main step-up transformer at V.C. Summer Nuclear Station Unit 1 experienced an internal fault on the center bushing on the transformer. (*See* Direct Testimony of George A. Lippard, III at 7-8, Annual Review of Base Rates for Fuel Costs for Dominion Energy South Carolina, Public Service Commission (No. 2022-2-E) (Feb. 7, 2022), attached as Exhibit CC.) The fault resulted in catastrophic damage to the transformer and ultimately, a fire on the transformer. The main transformer sends power onto the grid from the station. In addition to the fault and fire, the transformer failure resulted in a leak of transformer mineral oil, a highly flammable substance.

V.C. Summer 1 was taken offline due to the transformer failure and fire beginning on November 15 through December 10, 2021. Santee Cooper was required to take steps to make up the loss of the power that would have been generated from V.C. Summer 1 and has costs from the remediation of the incident. The work to repair ion me beft Te(m)-1.10 (i)-2 (l)-10 (r)2.9 (n)-4u.80 (on)de80 (g

b.

been available during the time period of the outage caused by the transformer failure and fire. (*See id.*)

Based on the assessment described in the nFront Letter, for the 2021 Reporting Period, Santee Cooper's system energy costs as a result of the V.C. Summer 1 transformer failure and fire are \$5,011,713. Due to differences in various customer and contract provisions, Santee Cooper is evaluating the allocation and recovery mechanisms related to these costs and expects the amount that could be recovered in the future to be less than the amount for the full system. Santee Cooper will update the Court regarding the amount to be recovered in the future.

In summary, the total amount for this exception for the 2021 Reporting Period is \$5,590,376.93. The amounts for each component of the costs for the V.C. Summer 1 transformer failure and fire are the following:

Santee Cooper utilized a mechanism within its accounting system to track costs and expenses related to Elsa, including costs incurred securing infrastructure to minimize adverse impacts and restoration. Santee Cooper's total cost was \$175,069.99, all incurred during the

(See Santee Cooper Reform Plan, Exs. V & VI – Electric Operating Revenues; Central 2021 Cost of Service, Ex. I – Projected Central Rates and Charges, & Ex. II – Actual Central Rate Study, excerpts attached as Exhibit JJ.) As shown on the chart, the Supplemental Capacity and Transmission billing determinant variances exceed the 4% threshold of the Exception.

of \$50 million over the life of the bonds. (See Board materials from August 26, 2021 meeting, attached as Exhibit LL.)

CONCLUSION

Santee Cooper is in compliance with the Amended Final Order and Settlement Agreement. For 2021, the contribution to the Common Benefit Fund was paid when due, and rates have remained frozen. Santee Cooper has not deferred costs and expenses occurring during the 2020 or 2021 Reporting Periods to a future period to be collected in post Rate Freeze rates. In accordance