Santee Cooper Pending Cases
2020.02.25

Complex Litigation[1]				
Type	**Status**	**Matter Name and Description**	**Case No.**	**Jurisdiction**
Class Action Breach of Duty Breach of Contract Unjust Enrichment	Discovery Ongoing	***Hearn, et al. v. South Carolina Public Service Authority*** On August 16, 2017, Plaintiff George Hearn, on behalf of a putative class of retail customers, filed a class action complaint in Horry County alleging the Seller (the "Authority") acted negligently when it decided to build the Pee Dee coal generating facility in Florence County, and acted negligently when the decision to cancel construction was made. The complaint further alleges the Authority was negligent in accounting for the Pee Dee assets. The specific claims are: breach of duty to ratepayers, breach of contract, unjust enrichment, injunction and declaration of wrongful conduct, and money had and received. Legal defenses include Business Judgment Rule, burden on plaintiff to show bad faith (ultra vires action, etc.), statute of limitation/laches (based on each rate increase). Plaintiff claims damages of approximately $600 million. The Authority filed a motion to dismiss in response to Plaintiff's complaint. The hearing on the Authority's motion to dismiss took place on September 27, 2018 and an order denying the same was entered on April 4, 2019. The Authority filed an Answer on April 19, 2019. Discovery and depositions are ongoing.	**Case No. 2017-CP-26-05256**	**Horry County Court of Common Pleas** **(15th Cir.)** ***Transferred to Business Court**
Class Action Breach of Contract Taking	Working towards formalizing	***Jessica S. Cook et al. v. South Carolina Public Service Authority et al.***	**2017-CP-25-00348**	**Hampton County, S.C. Court of**

[1] Unable to estimate potential exposure.

Negligence Constructive trust	settlement agreement	Plaintiffs filed this putative class action in the Hampton County Court of Common Pleas on August 22, 2017, in connection with the Authority's decision to suspend construction of Summer Nuclear Units 2 and 3. Numerous amended complaints, responsive pleadings and cross-claims have been filed in the action since its inception, up to and including the Fifth Amended Complaint described below. On February 16, 2018, the Plaintiffs filed a motion for class certification. The proposed class is alleged to include all customers of the Authority and of electric cooperatives who paid utility bills that included "pre-construction, capital, in-service, construction, interest, and other pre-operational costs associated with Summer Nuclear Units 2 and 3 from January 1, 2007, to the present." On March 21, 2019, the Court entered a scheduling order. The Authority subsequently filed a motion to extend all deadlines in the scheduling order. The Plaintiffs filed the Fifth Amended Complaint on July 25, 2019. The Fifth Amended Complaint asserts nine claims against the Authority: (1) declaratory judgment that rates were not statutorily authorized; (2) breach of contract or breach of implied contract (direct customers); (3) unconstitutional taking; (4) violation of due process (direct customers); (5) negligence and/or gross negligence; (6) breach of contract or breach of implied contract (cooperative customers); (7) unjust enrichment/money had and received; (8) constructive trust (over the payment received under the Toshiba Settlement Agreement, any profits, performance bonuses, retirement packages, and other benefits, any sale profits, and previously-paid rates); and (9) equity. All of Plaintiffs' claims seek repayment of the amounts paid by ratepayers attributable to Summer Nuclear Units 2 and 3 under statutory, contract, tort, and equitable theories. The Fifth Amended Complaint also includes allegations that the Authority agreed to sell a 5% interest in Summer Nuclear Units 2 and 3 to SCE&G, declaring this portion of	**2019-CP-23-06675** **6:19-cv-03285-TLW**	**Common Pleas** ***Transferred to Court of Common Pleas, Greenville County by order entered November 5, 2019** ***Notice of removal to U.S. Dist. Court for the Dist. of S.C., Greenville Div. submitted by SCE&G, SCANA, & SCANA Svcs. on November 21, 2019** ***Remanded to State Court on 1/21/2020**

		ownership unnecessary for the Authority's purposes, and thereafter improperly continued to fund costs for that portion of the project. Plaintiffs also assert claims against the Board for breach of their statutory and fiduciary duties, unjust enrichment, constructive trust, and equity. On August 16, 2019, the Authority and its directors filed their answer to the Fifth Amended Complaint and the Authority asserted cross-claims against Central and Palmetto Electric Cooperative, Inc. ("Palmetto"), one of the Central Cooperatives, seeking a declaratory judgment regarding the rights of the parties under the Act. The Authority also filed a Third Party Complaint against the Electric Cooperatives of South Carolina ("ECSC"), the statewide service and trade association for electric cooperatives in the State, and asserted cross-claims against Central and Palmetto seeking a declaratory judgment regarding the rights of the Authority and Central under the Central Agreement, which is the contract governing Central's purchase of energy and power from the Authority. The Authority also asserted cross-claims against SCE&G for (1) breach of contract accompanied by fraudulent act; (2) gross negligence; (3) breach of fiduciary duties; (4) breach of contract accompanied by bad faith; (5) waste; (6) contractual indemnification; and (7) equitable indemnification. Plaintiffs also asserted claims against Palmetto, Central, SCANA, SCE&G, and SCANA Services. On August 9, 2019, Central filed its answer to plaintiffs' Fifth Amended Complaint and asserted the following cross-claims against the Authority and its directors: (1) declaratory judgment that the Authority breached its statutory duties; (2) breach of the Central Agreement by the Authority; (3) constructive trust (over the payment received from Citibank under the Assignment and Purchase Agreement); (4) breach of statutory duties by the Authority's directors; and (5) contractual indemnification		

		pursuant to the Central Agreement. The Authority and its directors filed their answer to Central's cross-claims on September 3, 2019. If Central were to successfully obtain a judgment that the Authority is not entitled to recover costs of Summer Nuclear Units 2 and 3 from Central under the calculation methodology set forth in the Central Agreement, such result would materially adversely affect the Authority's revenues. It is not known at this time whether the Authority would be able to increase rates to the Authority's other customers to make up for such a revenue shortfall. In addition, Central has claimed that the Authority must refund amounts that Central has already paid to the Authority for costs of Summer Nuclear Units 2 and 3, as well as a portion of the proceeds the Authority received under the Toshiba Settlement Agreement. Such a monetary judgment in favor of Central could adversely affect the Authority's liquidity. Such a revenue shortfall and adverse effect on the Authority's liquidity would result in a failure by the Authority to pay debt service on its Revenue Obligations and the occurrence of an event of default under the Revenue Obligation Resolution. In addition to seeking a declaration that the Authority would not have the right to include the Authority's costs of Summer Nuclear Units 2 and 3 in the rates charged to Central in the future, Central also seeks compensation for past sums it has paid to the Authority for such costs. Such past costs have been estimated to be in excess of $430 million through 2018. Central also alleges a constructive trust should be imposed on what it refers to as the "Citibank Payment," contending that this Citibank Payment amounts to $831.2 million, and requests an order directing the Authority to pay 70% of this amount to Central. Also on August 9, 2019, Palmetto filed its answer to Plaintiffs' Fifth Amended Complaint and asserted seven cross-claims against SCANA, SCE&G, the Authority, and the Authority's directors. Three of the cross-claims are asserted against all defendants: (1) negligence; (2) unjust enrichment; and (3) equity. Three of the		

		cross-claims are asserted solely against the Authority: (1) taking; (2) declaratory judgment that the Authority breached its statutory duties for charging rates for facilities that are not used and useful and establishing rates that were not just and reasonable; and (3) constructive trust with respect to the sum of $831.2 million allegedly paid to the Authority by Citibank. Finally, Palmetto asserted one cross-claim against the Authority's directors for a declaratory judgment that they breached their statutory duties for charging rates that are not just and reasonable. The Authority's and directors' answer to Palmetto's cross-claims was filed on September 27, 2019. On September 11, 2019, the State's Supreme Court issued an order reassigning to a new judge jurisdiction over all outstanding and future litigation of customer-related claims for reimbursements or refunds of monies paid in the form of increased utility rates related to the construction and abandonment of the Summer Units 2 and 3. Pursuant to the Supreme Court's order, the judge is vested with exclusive jurisdiction to hear and resolve all pretrial motions and matters in any case that may arise statewide, and upon the conclusion of pretrial matters the judge may preside over the trial of the case or assign the trial to another judge. The Supreme Court also ordered that the judge may require mediation of any case as deemed appropriate. On October 8, 2019, the judge convened a motions hearing and scheduling conference. At the hearing the judge tentatively set the trial to begin on February 24, 2020. She also heard several pending motions. The judge granted Plaintiffs' motion for class certification and granted the Authority's and SCE&G's motion to change venue from Hampton County, stating her intention to transfer the case to one of three counties in the upper part of the state, Anderson, Greenville or Spartanburg. She stayed SCE&G's motion to compel arbitration the Authority's cross-claims against SCE&G and granted the Authority's motion to sever from the trial		

		of the case and to stay Central's claims against. Discovery is ongoing. The Court convened mediation proceedings on October 14, 2019, and the parties participated in mediation for two days. The mediation was adjourned without resolution of the pending claims. On October 30, 2019, the judge entered a directive to the parties (the "Directive"), determining that mediation was not successful due to an impasse, and that plaintiff's counsel shall prepare an order for the judge's signature that the case shall be certified as a class action. The judge's Directive further required that the Authority's counsel shall prepare an order for the judge's signature that (a) the case shall be transferred to the court in Greenville County for a three week trial beginning February 24, 2020; (b) the Central Electric and Palmetto Electric Co-op claims against the Authority, and the Authority's claims against Central Electric and Palmetto Electric Co-op, are severed and stayed pending trial of the Cook case; and (c) staying until after trial the Court's ruling on SCANA's motion to compel arbitration of the Authority's claims against SCANA. Finally, the judge's Directive stated that the judge would rule on November 12, 2019 on any then remaining pending motions. On November 5, 2019, the Court granted the motions to transfer venue to Greenville County. On November 12, 2019, hearings were held on (a) the Authority's Motion for Specific Performance and/or Injunctive Relief against Dominion Energy South Carolina; (b) SCE&G's Motion to Compel Arbitration of the Authority's Defenses and Contentions; and (c) several Parties' discovery motions. The judge requested proposed orders, and the Authority submitted orders on the Motion for Specific Performance and Motion to Compel Arbitration on November 15, 2019. On November 18, 2019, Justice Toal stated she would sign the orders submitted by the Authority. On November 18, her law clerk stated that those		

		orders had been signed and electronically filed. These orders were published on November 21, 2019. On November 21, 2019 at approximately 8:39 p.m., SCE&G, SCANA Services, Inc., & SCANA Corp. submitted notices of removal to the U.S. Dist. Court for the Dist. of South Carolina, Greenville Division. On November 11, 2019, the Authority filed a complaint against Dominion Energy South Carolina seeking injunctive relief and specific performance in the Court of Common Pleas for Richland County (case no. 2019-CP-40-6303). The complaint tracks the motion for injunctive relief and specific performance described above (related to the AAA demand made by Dominion). On November 21, 2019, an order was entered granting the Authority's motion for preliminary injunction and staying the case. Case was remanded to state court on January 21, 2020. The parties reconvened mediation with Chief Justice Toal on February 18-19. In the early morning of February 20, the parties agreed to a term sheet to fully resolve the claims, as well as *Glibowski*, and are working on a formal settlement agreement, which will be subject to approval by the parties' various boards and ultimate approval by the court.*		
Class Action RICO	Working towards formalizing settlement agreement	***Timothy Glibowski et al. v. South Carolina Public Service Authority et al.*** * Plaintiffs filed this putative class action in the Beaufort Division of the United States District Court for the District of South Carolina on January 31, 2018. The Plaintiffs filed an amended complaint on April 23, 2018 adding the Authority as a defendant. The Plaintiffs' claims arise from the Authority's decision to suspend construction of Summer Nuclear Units 2 and 3. The action is being brought on	**No. 9:18-cv-273-TLW**	**U.S. District Court, D.S.C. (Beaufort)**

		behalf of a putative class of persons comprised of SCANA customers, Authority customers and Central Cooperative customers who were charged and paid advance charges for costs associated with the construction of the units from 2007 to the present. Amended complaints have been filed in this action since its inception, up to and including a Third Amended Complaint filed on July 30, 2019. The Third Amended Complaint asserts Racketeer Influenced and Corrupt Organizations Act (RICO) and RICO Conspiracy claims against SCANA, SCE&G, SCANA's officers, the Authority and the following employees of the Authority: Lonnie Carter (now retired), Marion Cherry, and Michael Crosby, as well as a takings claim against the Authority. Plaintiffs seek actual damages, treble damages under RICO, and attorneys' fees. Specifically, (i) under the RICO and RICO conspiracy claims, the plaintiffs allege that the class lost over $2.5 billion and seek damages in an amount to be determined at trial, but no less than this amount, and (ii) under the takings claim, the plaintiffs allege that the Authority has taken over $540 million from the class and seek the return of this amount. The Authority and its employees filed a motion to dismiss the complaint on August 20, 2019. As of the date hereof, no ruling has been made to date in respect to the Authority's motion to dismiss. On September 4, 2018, the Authority filed a motion asking the court to certify two questions to the S.C. Supreme Court: (1) whether the Authority is required by law to fix, maintain, and collect charges at rates sufficient to provide for payment of all its expenses, the conservation, maintenance and operation of its facilities, the payment of principal and interest on its debt, and the fulfillment of its obligations to holders of bonds and other debt – including the costs, expenses, and obligations associated with Summer Nuclear Units 2 and 3; and (2) whether the Authority is immune from plaintiffs' claims for money damages under the doctrine of sovereign immunity and the State's Tort		

		Claims Act. No ruling has been made to date in respect to the Authority's motion requesting certification. A hearing on the Authority's motion to dismiss is scheduled for March 10, 2020. *See last paragraph under *Cook*		
Securities, 10(b), 10b-5		***Murray C. Turka v. South Carolina Public Service Authority and Lonnie Carter*** Plaintiff filed this putative class action in the Charleston Division of the United States District Court for the District of South Carolina on April 15, 2019. The action asserts securities law claims against the Authority and Mr. Carter under Section 10(b) and Rule 10b-5 of the Exchange Act and against Mr. Carter under Section 20(a) of the Exchange Act the arising out of alleged misrepresentations made in the Authority's mini-bond offering documents regarding the status of Summer Nuclear Units 2 and 3. Specifically, the plaintiff alleges that the disclosure statements in the mini-bond offerings understated the extent of the risks associated with construction of Summer Nuclear Units 2 and 3 and that as a result the interest rate on the mini-bonds was artificially deflated. Plaintiff further alleges that if he had known the interest rate on the mini-bonds had been artificially deflated, he would not have purchased the mini-bonds. The proposed class includes purchasers of the Authority's mini-bonds from August 23, 2013 to July 31, 2017. The Authority and Carter moved to dismiss the Complaint on July 12, 2019, and that motion was fully briefed as of August 26, 2019. On February 25, 2020, Judge Gergel issued an order denying the motion to dismiss.	**2:19-cv-1102-RMG**	**U.S. District Court, D.S.C., Charleston**

Arbitration Demand	Withdrawn	***Dominion Energy South Carolina, Inc., f/k/a South Carolina Electric & Gas Co. v. South Carolina Public Service Authority, American Arbitration Association*** On October 20, 2011, the Authority and SCE&G (now Dominion) entered into a Design and Construction Agreement (the "DCA"), which set forth the terms and conditions of the parties' joint undertaking to construct Summer Nuclear Units 2 and 3, including contributing a proportionate share of the costs of Summer Nuclear Units 2 and 3 based on their respective ownership interests. Such costs included the cost of claims brought by third parties with respect to services provided by SCE&G in its role as agent for Summer Nuclear Units 2 and 3 under the DCA. SCE&G is currently a named defendant in several lawsuits with respect to Summer Nuclear Units 2 and 3, including the *Cook*, *Glibowski* and DOR matters described above which also name the Authority as a defendant. Dominion asserts that, under the cost-sharing provisions of the DCA, the Authority may be liable for costs associated with such lawsuits against SCE&G, even if it is not a named defendant therein. On November 11, 2019, Dominion filed a Demand for Arbitration before the American Arbitration Association, seeking in excess of $1,000,000,000 for a portion of "costs incurred for third-party claims relating to" the suspended nuclear project, alleged to be approximately $2,240,000,000 as of the date of the filing. Dominion alleges that under the DCA, the Authority is responsible for 45% of all costs SCE&G has incurred, is incurring, and will incur in connection with third-party claims related to the nuclear project, including nine (9) separate actions, including the *Lightsey* class action settlement in which Dominion agreed to provide more than $2 billion in rate relief to the settlement class.		**American Arbitration Association**

		On November 12, 2019, the Court in the *Cook* case issued a ruling from the bench enjoining Dominion from proceeding with the arbitration demand. For this reason, on November 18, 2019, Dominion's counsel notified Santee Cooper that it stays the arbitration matter based on the Court's ruling. On November 21, 2019, Dominion notified AAA it was withdrawing its demand for arbitration.		
Quiet Title and Declaratory Judgment	Only Unnamed Defendants remain	***Santee Cooper v. WEC, Brookfield Business Partners, L.P., & Doe Defendants*** On May 14, 2019, Santee Cooper filed a quiet title and declaratory judgment action against WEC, Brookfield Business Partners, and Doe Defendants, who are fictitious names representing all unknown persons or entities who may claim an interest, to declare it has sole title to certain property for construction and operation of V.C. Summer Units 2 and 3. Santee Cooper has dismissed WEC without prejudice given the Bankruptcy Court's decision to retain jurisdiction. Santee Cooper has also voluntarily dismissed Brookfield Business Partners pursuant to a stipulation whereby Brookfield specifically disclaimed any and all legal or equitable interests in, liens against, title to, or ownership, possession, or control of any equipment, materials, personal property, real property, or property of any kind located at, procured for, purchased for, or otherwise related to V.C. Summer. The action remains viable against the Doe Defendants, but no such Defendants have appeared after service by publication. On January 17, 2020, Santee Cooper filed a Motion for Entry of Default against the Doe Defendants which was entered by the Clerk of Court on January 22, 2020. Currently pending before the Court is Santee Cooper's Motion for Default Judgment against the Doe Defendants (filed, February 20, 2020).	**2:19-cv-01432-RMG**	**U. S. District Court, District of South Carolina, Charleston Division**

Santee Cooper Pending Cases
2020.02.25

MDL Litigation (Santee Cooper as Plaintiff/Class Member)				
Type	**Status**	**Matter Name and Description**	**Case No.**	**Jurisdiction**
Anti-Trust MDL	Partially Settled, partially ongoing, in court mandated settlement with remaining Defendants	***In Re: Liquid Aluminum Sulfate Antitrust Litigation*** **Plaintiffs**: Santee Cooper; Commission of Public Works of the City of Spartanburg; and City of Winston Salem (filed complaint together in D.S.C.). The MDL also includes municipalities, water authorities, chemical companies, mills, design firm, paper companies, and private water companies from all over the country as plaintiffs. **Original Defendants**: General Chemical Corporation; General Chemical Performance Products, LLC; General Chemical, LLC; Chemtrade Logistics Income Fund; Chemtrade Logistics, Inc.; Chemtrade Chemical Corporation; Chemtrade Chemicals US, LLC; American Securities, LLC; GEO Specialty Chemicals, Inc.; C&S Chemicals, Inc.; C&S Chemicals (of Georgia) Inc.; RGM Chemical, LLC; RGM of Georgia, Ltd.; USALCO, LLC; Delta Chemical Corporation; Kemira Chemicals, Inc.; Southern Ionics Incorporated; Frank A. Reichl; Vincent J. Opalewski; Brian C. Steppig; Alex Avraamides; Amita Gupta; Matthew F. LeBaron; Scott M. Wolff; Kenneth A. Ghazey; Milton Sundbeck; John D. Besson; and John Doe Nos. 1 – 50. **Claims**: The complaint alleges violations of the Sherman Anti-Trust Act, 15 U.S.C. § 1, *et seq*. and the Clayton Antitrust Act, 15 U.S.C. §§ 12-17 & 29 U.S.C. §§ 52-53 (Claim I). South Carolina specific claims include claims for violations of South Carolina Code Ann. § 39-3-10 *et seq*. and claims for fraud, breach of contract, and restitution/disgorgement/unjust enrichment. The anti-trust issues allowed federal question jurisdiction. There is a related DOJ investigation and related criminal indictments Damages: Plaintiffs seek compensatory damages, restitution, disgorgement, treble damages, punitive damages, injunctive relief, and other relief, including but not limited to an award of	**2:16-md-02687-MCA-MAH (D.N.J.) 2:18-cv-01047-MDL (D.S.C.)**	**MDL in U.S. District Court, D.N.J. (D.S.C. Charleston)**

		attorneys' fees and expenses, as well as pre-judgment and post-judgment interest on the damages awarded, against Defendants, jointly and severally, for conspiring to suppress and eliminate competition in the sale and marketing of aluminum sulfate ("Alum") by agreeing to rig bids and allocate customers for, and to fix, stabilize, inflate, and maintain the price of Alum sold to companies and municipal authorities in the United States from January 1, 1997 through at least February 2011 and until such time as to be determined (the "Conspiracy Period"). In addition, the South Carolina Plaintiffs seek a refund of the full price paid for their Alum supply contracts (believed to be in excess of $7,900,000) for the same actions by one or more Defendants. Defendants' actions caused municipalities across the United States to overpay by many millions of dollars for the Alum they needed. Plaintiffs, which have paid millions of dollars to purchase Alum, seek to recover damages they suffered from the initiation of the conspiracy until the cessation of the anticompetitive effects resulting therefrom (the "Injury Period"). **Background and Allegations**: The defendant companies are manufacturers and distributors of the Alum used by municipalities to treat potable water and/or wastewater, by pulp and paper manufacturers as part of their manufacturing process, and in lake treatment to reduce phosphorous levels contributing to degraded water quality. The individual defendants were executives at these companies. As a result of Defendants' unlawful conduct, Plaintiffs paid more for Alum than they would have if a competitive market had determined Alum prices. More specifically, the complaints allege Defendants conspired, combined, and contracted to fix, raise, maintain, and stabilize the prices at which Alum would be sold. Defendants engaged in regular communications throughout the Conspiracy Period, to discuss customer allocation and prices for Alum. The complaint notes that "evidence in the form of phone records and emails between top executives at the Defendant companies and their co-conspirators demonstrate that they furthered the conspiracy by		

		(a) meeting or otherwise communicating to discuss their respective Alum businesses, including the prices quoted or bid to their customers, (b) agreeing to allocate customers and "stay away" from each other's historical customers, (c) agreeing to rig bids by submitting intentionally high "throw-away" bids to a particular customer to ensure that their co-conspirator, the existing seller to that customer, would continue to "win" that customer's business (or to help the co-conspirator to raise the prices paid by that customer), and (d) withdrawing a winning bid or price quote in cases where a bid was inadvertently submitted." Santee Cooper survived a Motion to Dismiss. The District Court judge found Santee Cooper demonstrated subject matter jurisdiction. **Settlements**: Santee Cooper, and more than a dozen other plaintiffs (municipalities and public utilities) reached a settlement with GEO Specialty Chemicals, Inc. $3 million was to be divided among these plaintiffs. (Ghazey and Steppig dismissed.) C&S and Southern Ionics also settled. General Chemical Corporation, General Chemical Performance Products, LLC, General Chemical, LLC, GenTek Inc., Chemtrade Logistics Income Fund, Chemtrade Logistics Inc., Chemtrade Chemicals Corporation, Chemtrade Chemicals US LLC, Chemtrade Solutions LLC also settled. (Alex Avraamides, Frank Reichl, Amita Gupta, Vincent Opalewski, Matthew LeBaron, and Scott Wolff, personal defendants were released). A fairness hearing to review the terms of these settlements was set for November of 2019. **Status**: On September 12, 2019 the case was reassigned to Magistrate Judge Michael Hammer. Santee Cooper and its fellow class plaintiffs (deemed the Direct Action Plaintiffs) were directed to participate in a settlement conference with the remaining defendants (Kemira, USALCO, Delta Chemical, RGM, American Securities, and Brenntag, as well as related personal defendants). A whistleblower who formerly worked for General Chemical Corp.		

		and its successor Chemtrade Logistics, Inc., intervened in the case based on his related qui tam actions in state courts. Mediation was held January 14-15, 2020 in Newark, NJ and the judge required all parties to attend. **Agreement reached with two defendants (Delta and USALCO) at mediation. Settlement discussions with the remaining defendants are ongoing.**		
Anti-Trust MDL	Recently Filed	***In Re: Liquid Aluminum Sulfate Antitrust Litigation*** Anti-trust complaint filed 10/21/2019 against Brenntag Mid-South and Brenntag Southeast. Same allegations as previously filed MDL. Plaintiffs include: Washington Suburban Sanitary Commission; Fairfax County Water Authority; Appomattox River Water Authority; County of Chesterfield; County of Henrico; City of Lynchburg; City of Newport News; City of Norfolk; Rivanna Water & Sewer Authority; South Central Wastewater Authority; City of Springfield; Commission of Public Works of the City of Spartanburg; City of Winston-Salem Santee Cooper, City of Baltimore, and City of Richmond. Santee Cooper is represented by AquaLaw PLLC and Ballard Spahr.	**2:19-cv-02981-MDL**	**U.S. District Court (D.S.C. Charleston)**
Anti-Trust MDL	Class cert. denied, Various parties entering tolling agreements	***In re Rail Freight Fuel Surcharge Antitrust Litigation*** Putative class actions were filed in 2007 in the United States District Court for the District of Columbia by rail shippers alleging that the four largest Class I railroads—CSX, Norfolk Southern, BNSF, and Union Pacific—conspired to set artificially-high rate-based fuel surcharges 2003 and 2010.	**1:07-mc-00489-PLF-GMH** **MDL Docket No. 1869**	**United States District Court, District of Columbia**

		Plaintiffs allege this collusion cost shippers billions of dollars they would not have lost in an otherwise competitive market. In 2017, District Court Judge Paul Friedman ruled that, despite the "strong evidence of conspiracy and antitrust injury to rail shippers," the putative class had failed to establish predominance and he denied class certification. The case was stayed pending appeal and the railroads agreed to continue to toll the claims of all shipper class members during the appeal period. On August 16, 2019, the Unites States Court of Appeals for the D.C. Circuit affirmed Judge Friedman's decision to deny class certification. Santee Cooper entered into tolling agreements with CSX, Union Pacific, Norfolk Southern, and BNSF. On January 31, 2020, Santee Cooper (through its attorneys Nexsen Pruet) filed a complaint in the U.S. District Court for the District of Columbia. The antitrust complaint alleges the "Big 4" railroad companies listed above conspired to fix prices by charging an agreed-upon rail fuel surcharge for rail freight transportation services between 2003-2010, and that Santee Cooper paid excessive prices due to the price fixing scheme among the railroad companies. Santee Cooper's prayer for relief includes compensatory damages, treble damages, and attorney fees.	**Misc. No. 07-489**	

Bankruptcy Court/Other Nuclear Litigation

Type	Status	Matter Name and Description	Case No.	Jurisdiction

Recovery of Chattel	Ongoing, Discovery ongoing	***Westinghouse Electric Company, LLC, as reorganized v. South Carolina Public Service Authority*** On April 5, 2019, WEC filed an adversary proceeding complaint in the United States Bankruptcy Court for the Southern District of New York against Santee Cooper, alleging a cause of action for recovery of chattel. WEC claims it is the owner of certain equipment related to the construction of Units 2 and 3 of the V.C. Summer Nuclear Generating Station. The pleadings stage of this action has been completed. Santee Cooper answered and asserted counterclaims for declaratory judgment and to quiet title to the equipment. In reply, WEC also asserted a counterclaim for declaratory judgment based upon the Owners' recent termination of the EPC. Discovery is proceeding under an expedited scheduling order. A mediation was held on December 13, 2019 and concluded with agreement for Santee Cooper counsel to draft and attempt to address concerns about direct costs. Drafting of a final agreement continued following that mediation. Subsequently, another mediation was held at the Wampee Convention Center on January 29, 2020 which led to a handshake agreement to resolve the matter. The parties continue to work to finalize a formal agreement effectuating the terms of that agreement.	**Case No. 17-10751 (MEW) 19-01109-cgm; Adv. Proc. No. 19-01109 (CGM)**	**United States Bankruptcy Court for the Southern District of New York**
Administrative Claim for Overpayment to the debtors	Pending	***In re Westinghouse Electric Company LLC, et al.*** On August 30, 2018, South Carolina Electric & Gas Company and Santee Cooper ("Owners") filed an Administrative Claim in the Westinghouse Bankruptcy Proceeding for overpayment to the debtors under the terms of the Interim Assessment Agreement with respect to the construction of Units 2 and 3 of the V.C. Summer Nuclear Generating Station. The Owners and Westinghouse Electric Company, LLC ("WEC") and WECTEC, Inc. (f/k/a Stone & Webster, Inc.) entered into an Interim Assessment Agreement, dated March 28, 2017 (the "IAA").	**Case No. 17-10751 (MEW)**	**United States Bankruptcy Court for the Southern District of New York**

		The IAA contemplated the continued construction at the V.C. Summer site; however, it required the Owners to fund the costs of continued construction from the filing date of WEC's Chapter 11 petition through the IAA termination date (the "IAA Period"). Funds were advanced weekly by the Owners based upon WEC's estimate of engineering and construction services during the coming week. The IAA made clear that funds advanced by the Owners would be maintained in a segregated, interest-bearing account and could only be used to pay obligations incurred to vendors and subcontractors to the V.C. Summer project during the IAA Period. Pursuant to several amendments, the IAA was extended through August 10, 2017. The IAA was terminated by the Owners effective August 7, 2017. Based upon an initial review of the disbursement report contemplated by the IAA, the Owners determined that the amounts paid by the Owners to the Debtors exceeded the actual and appropriate cost incurred by the debtors during the IAA Period. As of the date the Administrative Claim was filed, the Owners determined that the amount of the overpayment was $215,564,030.70. However, as contemplated by the IAA, the Owners continued to perform the reconciliation contemplated by the IAA and have revised and reduced their claim since that time. W. Wind Down Company, LLC ("Wind Down Co.") is the special purpose entity established pursuant to the debtors' confirmed Chapter 11 Plan of Reorganization for the liquidation and distribution of the assets transferred to Wind Down Co., including the resolution of claims in accordance with this plan. Among the assets transferred to Wind Down Co. for distribution was the entire balance of the Owners segregated interesting bearing account, which had been transferred to Wind Down Co. from WEC as reorganized, on March 27, 2019. Wind Down Co.'s objection to the Owners' Administrative Claim is broadly based		

		upon a perceived failure by the Owners to meet their burden of proof, coupled with a much broader understanding of the types of costs that the Owners committed to pay through the IAA during the IAA Period. On May 16, 2019, a Stipulation and Order Regarding Discovery and Scheduling was entered with respect to the Administrative Expense Claims of the Plant Vogtle Owners and the V.C. Summer Owners[2]. The Stipulation and Scheduling Order provides for an initial 60-day reconciliation period, which may be extended by mutual agreement by Wind Down Co. and the respective claimant. The reconciliation period on the Owners' Claim has been extended on four occasions, with the Reconciliation period now scheduled to end on December 16, 2019, unless extended further. If the agreement is not reached by Wind Down Co. and the Owners and the Reconciliation period is not extended further, the following schedule would apply: • December 23, 2019: Owners Dispute File; Wind Down Company File • January 13, 2020: Deadline to serve discovery requests • February 13, 2020: Deadline to serve responses and objections to discovery request • February 13, 2020: Deadline to commence production of responsive documents on a rolling basis • February 28, 2020: Document Discovery End Date • April 11, 2020: Privilege Logs serve. • April 18, 2020 Deadline to Issue Deposition Notices • April 18, 2020: Deposition Start Date • May 20, 2020: Discovery End Date • June 4, 2020: Opening Briefs Due • June 16, 2020: Pretrial hearing		

[2] On June 20, 2019, Notice was given at the Bankruptcy docket of the settlement of the Vogtle Administrative Claim.

		• June 18, 2020: Supplemental Briefs due. • TBD – 7 days: Joint Pre-Trial Order Due • TBD: Evidentiary hearing on Consolidated Motions		
Indemnification	Case Stayed	***Fluor Enterprises, Inc. and Fluor Daniel Maintenance Services, Inc. v. South Carolina Electric & Gas Company and South Carolina Public Service Authority*** On September 7, 2018, Plaintiffs Fluor Enterprises, Inc. and Fluor Daniel Maintenance Services, Inc. filed a complaint in the Court of Common Pleas, Fairfield County, South Carolina, against South Carolina Electric & Gas Company and South Carolina Public Service Authority seeking indemnification for several Worker Adjustment and Retraining Notification Act (WARN Act) lawsuits filed against Plaintiffs in United States District Court, related to Plaintiffs' termination of their employees working on V. C. Summer Units 2 & 3 (Case No. 2018-CP-20-00343). Plaintiffs allege they were subcontracted by Westinghouse to assist in construction and maintenance of VCS. Under the amended subcontract with Westinghouse, severance and WARN Act costs were to be reimbursed by Westinghouse. Plaintiffs notified Defendants of their intent to suspend work under its amended subcontract with Westinghouse based upon Westinghouse's failure to pay as promised. Fluor alleges Defendants agreed to make payments directly to Fluor for work performed during an assessment period and allege Defendants urged Fluor to keep working through June 26, 2017, which was later extended to August 10, 2017. Plaintiffs allege they were notified construction was ceasing on July 31, 2017. As a result, Plaintiffs were unable to give their employees the requisite notice of termination as required by the WARN Act and are named in three lawsuits alleging the same. Plaintiffs claim they should be indemnified by Defendants for any damages awarded in those three lawsuits. Plaintiffs pleaded the following causes of action: equitable indemnity, breach of contract, and promissory estoppel. Plaintiffs assert they relied on	**Case No. 2018-CP-20-00343**	Court of Common Pleas, Fairfield County, South Carolina

		assurances by Defendants to continue staffing and working on the project. On October 31, 2018, the Authority filed a motion to dismiss or stay the case based upon Plaintiffs failure to state a cause of action, and the lawsuit is premature as the underlying WARN Act lawsuits are pending. The Court denied the motion on February 20, 2019. The Authority filed an answer on March 11, 2019, denying Plaintiffs' allegations, denying it had a special relationship with Plaintiffs, and denying it agreed to indemnify Plaintiffs. The Authority also claimed the case is not ripe for review because the underlying WARN Act lawsuits have not been adjudicated. On September 10, 2019, a consent order staying the case until March 1, 2020 was submitted to the court. The judge did not enter the order but indicated he believed the case had been transferred to the Hon. Jean H. Toal. No other actions have been taken. The underlying WARN Act lawsuits against Fluor are pending in the United States District Court for the District of South Carolina, Rock Hill Division.		

IRF Litigation[3]

Type	Status	Matter Name and Description	Case No.	Jurisdiction
Motorcycle/ Premises Liability	Pending	***Harry Richard Barley v. Santee Cooper*** Plaintiff was riding bicycle in parking lot behind pizzeria and rode over a power box, fell off bike and broke leg. Alleges Santee Cooper did not build it flush with ground. Santee Cooper counters that Plaintiff did not maintain lookout, did not observe the conditions, and did not exercise reasonable care. Mediation set for March.	**2019-CP-26-01584**	**Horry County Common Pleas (15th)**

[3] Estimated Exposure is based on the limits of the South Carolina Tort Claims Act. S.C. Stat. §15-78-120.

Santee Cooper Pending Cases
2020.02.25

Motorcycle/ Premises Liability	Pending	***Dawn Moore v. Horry County, et al.*** Claimant was passenger on a motorcycle which was in an accident on International Drive. Plaintiff alleges Santee Cooper had a duty to upkeep the road and warn drivers. Santee Cooper argues it does not own the road, only used it as an easement. Defendant Gill added cross claim, Santee Cooper filed answer on 2/7/2020.	**2019-CP-26-00520**	**Horry County Common Pleas (15th)**
Premises Liability	Set for trial	***Randolph MacKenzie v. SCDOT, et. al.*** Plaintiff crashed motorcycle on unpaved road. Santee Cooper has easement to use road to access a station. Plaintiff claims Santee Cooper undertook improvements. Santee Cooper argues it does not own or control the road, thus had no duty to warn. Frist mediation was unsuccessful. Second mediation set for 4/28/2020.	**2016-CP-2177**	**Horry County Common Pleas (15th)**
Auto	Pending/ Discovery	***Jason Perdziak v. Daniel Yourko and Santee Cooper*** Employee Yourko driving fleet vehicle ran into bicyclist and allegedly ran stop sign. Plaintiff alleges Yourko has a lengthy history of vehicle violations. Plaintiff was intoxicated and riding bicycling in incorrect lane and on sidewalk. Case in discovery phase. Plaintiff's deposition taken. Santee Cooper filed motion to strike complaint based on language. Moved to dismiss employee from suit. Depositions of first responders and	**2019-CP-26-01197**	**Horry County Common Pleas (15th)**

		medical personnel held in December. More depositions scheduled for February, 2020. Mediation set for mid-March, 2020.		
Premises Liability	Newly Filed	***Buster Jones v. Santee Cooper*** On October 18, 2018, Buster Jones, an independent contractor, was injured at Cross Generating Station, allegedly due to unsafe unloading process. Box landed on contractor's hand after falling from pallet on forklift operated by Beverly Services Employee. Contractor on site under the Beverly Services agreement. Plaintiff is alleging negligence; negligent hiring, retention and supervision. Santee Cooper filed an answer in the case and discovery is ongoing.	**2019-CP-08-02580**	**Berkeley County Common Pleas (9th)**
Premises Liability	Newly Filed	***Iris Borrero v. Santee Cooper*** Ms. Borrero was injured when she tripped on a sidewalk in Myrtle Beach while jogging on 11/17/2016. Suit was filed 11/17/2019. Santee Cooper accepted service on 2/7/2019. Statute of Limitations has passed on claims against Santee Cooper as no certified petition was filed. Assigned IRF attorney filed a Motion to Dismiss, which is pending as of 2/25/2020.	**2019-CP-26-07423**	**Horry County Common Pleas**

Administrative Law Cases

Type	Status	Matter Name and Description	Case No.	Jurisdiction
Contract Dispute	Ongoing	***SCPSA v. U.S. Army Corps of Engineers*** Santee Cooper filed a claim against the U.S. Army Corps of Engineers ("COE") seeking a determination that the COE Rediversion Contract does not require Santee Cooper to credit the COE for a capacity value surcharge and that the COE owes The	**N/A**	**Armed Services Board Contract Appeals**

		Authority approximately 1.4 million in contract payments for 2015. The COE denied the claim, asserted Santee Cooper was required to pay the credit, and that a credit in the amount of $716,874 was due to the COE for 2015. Santee Cooper appealed the decision to the Armed Services Board of Contract Appeals ("ASBCA") and the COE counterclaimed. The parties have asked the ASBCA to determine the rights under the contract. If the ASBCA determines that no credit is required, the Authority will prevail at the Board level. If the ASBCA determines that a credit is required, the parties will be required to attempt to determine the amount of the credit due to the COE for the remainder of the contract. If the parties do not reach an agreement, the court will decide the amount. The parties briefed the issues in the summer of 2018 but no timetable for a decision has been provided by the ASBCA. The parties have attempted settlement discussions but have been unsuccessful.		

Miscellaneous				
Type	**Status**	**Matter Name and Description**	**Case No.**	**Jurisdiction**
Government Inquiries re: VC Summer	Pending	***Investigations and responses to requests for information related to the V.C. Summer Units 2 and 3 Nuclear Project*** Santee Cooper is responding to various government investigations and collection, review, and production of documents related to V.C. Summer Units 2 and 3 to the following parties who requested same:	N/A	U.S. District Court, D.S.C., DOJ, SEC, and public FOIA requests

		(1) government officials, specifically the Governor, the Speaker of the House, and the President Pro Tem of the Senate, who demanded production of certain documents pursuant to state law; (2) the U.S. Department of Justice, which subpoenaed documents in connection with its investigation into matters related to V.C. Summer (subpoenas dated September 7, 2017, October 26, 2017, and October 24, 2017); (3) the Securities and Exchange Commission, which subpoenaed documents in connection with its investigation into matters related to V.C. Summer (subpoenas dated October 18, 2017 and March 2, 2018); and (4) multiple entities and individuals who have requested documents about V.C. Summer pursuant to the South Carolina Freedom of Information Act. Santee Cooper has not concluded that an unfavorable outcome is probable or remote and, therefore, express no opinion on the likelihood of an unfavorable outcome or potential loss.		
Arbitration (The Authority is not a party) Breach of Contract	Ongoing	***Cameco Inc. vs. South Carolina Electric & Gas Company*** On May 12, 2008, Dominion, for itself and as agent to the Authority, entered into a Uranium Hexafluoride ("UF6") Supply Agreement with Cameco, Inc. ("Cameco"), a Nevada corporation that supplies uranium products (the "Original Agreement"). The Original Agreement called for delivery of a total of 1,535,000 kilograms of elemental uranium ("kgU") of UF6 to Dominion. The total quantity to be delivered was spread out over the 2010 to 2016 time-period with an annual base quantity specified for each year. The Original Agreement was subsequently amended on January 25, 2011 (the "Amendment") (the Original Agreement, as amended by the Amendment, is hereinafter referred to as the "Agreement"), to provide for additional deliveries of UF6 over an extended contract term covering the period of 2017 to 2020. The	01-18-0004-7532	New York, New York (Arbitration before the International Centre for Dispute Resolution)

		Amendment called for an additional 1,640,000 kgU of UF6 to be delivered with 410,000 kgU identified as the annual base quantity for each year of the extended term. The Amendment also modified the pricing terms. On December 18, 2018, Cameco initiated an arbitration proceeding alleging that Dominion was in breach of the Agreement when it did not take and pay for the full quantity of UF6 to be delivered under the Agreement, for use in V.C. Summer Nuclear Unit 1 and VCSNS 2 and 3. The Authority, as co-owner of those plants, may be responsible for a portion of any judgment against Dominion. The Authority, however, was not named as a respondent in the arbitration proceeding. The estimated amount of any such judgment is unknown at this time. The dispute centers around Dominion's cancellation of certain UF6 deliveries in 2017 and 2018 by invoking a provision in the Agreement allowing for reductions in the delivery of UF6 resulting from reductions in existing unit operations. Specifically, Cameco alleges that Dominion wrongfully cancelled deliveries of 129,000 kgU of UF6 in 2017 and 228,000 kgU in 2018. In the arbitration, Cameco seeks an award requiring Dominion to remedy the deficiency in the price of UF6 sold by Cameco to other parties and the price at which UF6 would have been sold to Dominion under the Agreement. It further seeks an order requiring Dominion to purchase the quantities cancelled in 2017 and 2018 as well as the remaining quantities through 2020. Alternatively, it seeks damages for the alleged breach. Dominion has denied the allegations in the arbitration proceeding. On August 9, 2019, Cameco filed a statement of claim in support of its request for relief. Under the procedural order set by the panel of arbitrators, Dominion's statement of defense is due on November 13, 2019. The Authority has not been informed by Dominion's counsel whether there has been any further alteration to the schedule nor has it been provided with a copy of		

		Dominion's statement of defense. The evidentiary hearing on the issue of liability is scheduled to begin in October 2020.		
Insurance Claims	Ongoing	***Insurance Claims*** The Authority has initiated several actions against its insurance carriers regarding coverage of the V.C. Summer matters.	*	*