STATE OF SOUTH CAROLINA COUNTY OF HAMPTON Richard Lightsey, LeBrian Cleckley, Phillip Cooper, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, SCANA Corporation, and the State of South Carolina, Defendants, South Carolina Office of Regulatory Staff, Intervenor.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-25-335 **ORDER ON CLASS COUNSEL'S MOTIONS FOR FINAL SETTLEMENT APPROVAL AND FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

This matter is before the Court on Class counsel's motions for final approval of the class settlement and for an award of attorneys' fees and costs from the common fund. The motions were argued before the Court on May 14, 2019. For the reasons stated below, the Court grants final approval to the class settlement and approves the application for attorneys' fees and costs as amended following the May 14 hearing.

I. INTRODUCTION

The events culminating in today's order stem from the July 31, 2017 cancellation of the V.C. Summer nuclear power plant project in Fairfield County. Class counsel contend that the root causes of that collapse came to light through their tenacious efforts to uncover evidence of the bad decisions, lax supervision, and concealment they believe

infected the project. SCE&G disputes Class counsel's characterization of its conduct and denies any liability to the class. It contends that its actions were authorized by law and its knowledge of the project was shared by others, including its project partner and regulatory authorities. The settlement ends this litigation without resolving the parties' conflicting views of the evidence.

Regardless of one's evaluation of the evidence, it is inescapable that Class counsel were able to achieve a class resolution that many thought improbable at the outset. While their efforts do not totally compensate for the years of customer nuclear charges, they achieved a result that the Court finds is eminently "fair, reasonable, and adequate," for which they deserve a significant fee.

Under the South Carolina Rules of Civil Procedure, "[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." SCRCP 23(c). On December 5, 2018, this Court gave preliminary approval to the proposed class settlement and ordered that notice of it be sent to class members for their comments and for class members to have an opportunity to exclude themselves from the litigation.

Pursuant to the Court's order, Class counsel undertook to notify the class in several ways:

1. Class counsel worked with SCE&G's counsel and identified 886,554 current customer accounts and 742,193 former customer accounts that fit the class definition. The current customers received notice of the settlement through bill inserts from SCE&G. Of the 742,193 former customer accounts, 533,143 had email addresses on file, of which 148,295 were identified as duplicates, leaving 384,848 email addresses for transmitting the class notice. The 209,050 former customers without email addresses were sent an individual notice by mail. As a result, all 1,628,747 current and former customer

accounts that meet the class definition were sent an individual notice. The class also re-mailed 62,520 notices after correcting the address of the recipient;

2. The class notice was also published in *The Columbia State*, *The Greenville News*, *The Charleston Post & Courier*, *The Aiken Standard*, *The Beaufort Gazette / Island Packet*, *The Rock Hill Herald*, and *The Myrtle Beach Sun News*. These seven papers cover the state and provide extensive supplemental notice to the individual notice discussed above; and

3. Class counsel set up a settlement website and a settlement call center to provide additional information and answer inquiries from class members. The call center fielded 65,536 calls, while the website was visited 43,058 times. A total of 1,473 notice packets were sent to callers requesting one on the toll free line.

These multiple efforts at notification far exceed the due process requirement that the class representative provide the best practical notice. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 94 S.Ct. 2140 (1974); *Hospitality Mgmt. Assoc., Inc. v. Shell Oil, Inc.*, 356 S.C. 644, 591 S.E.2d 611 (2004). Following this extensive notice campaign reaching over 1.6 million potential class member accounts, Class counsel have received just two objections to the settlement and only 24 opt outs.

The South Carolina Rules of Civil Procedure are similar in many respects to their federal counterpart. Recognizing this similarity, the South Carolina Supreme Court has instructed that "we look to the construction placed on the Federal Rules of Civil Procedure." *Gardener v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). Accordingly, it is appropriate to follow the well-established federal procedure for class action settlement approval.

The standards for final approval of a class settlement were summarized by the Honorable Joseph F. Anderson, Jr., the mediator in this case, in *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 335, 338-39 (D.S.C. 1991), as follows:

1. Whether the settlement was the product of good faith bargaining, at arm's length, and without collusion;

2. The relative strength of the parties' cases as well as the uncertainties of litigation on the merits and the existence of difficulties of proof or strong defenses that the plaintiffs are likely to encounter if the case proceeds to trial;

3. The complexity, expense, and likely duration of additional litigation;

4. The solvency of the defendants and the likelihood of recovery on a litigated judgment; and

5. The degree of opposition to the settlement by class members.

II. FINAL SETTLEMENT APPROVAL

To receive final approval, the Court must be convinced that a proposed class settlement is fair, reasonable, and adequate in light of all the facts and circumstances. Fed. R. Civ. P. 23(c)(2). The Court discusses the relevant factors below.

A. The Settlement Negotiations

Because of the danger that counsel might compromise a suit for an inadequate amount to ensure a fee, the Court is obligated to determine that the settlement was reached as a result of good faith bargaining at arm's length. The Court has examined the negotiation process leading to the settlement to ensure that the compromise was the result of arm's length negotiations and that Class counsel had the ability to effectively represent the interests of the class.

The record is devoid of evidence suggesting the existence of any sort of agreement between the parties other than the settlement presented to the Court. The Court knows of no facts or circumstances that would suggest the parties or attorneys have acted in bad faith or colluded in any respect.

To the contrary, a review of the record shows great patience and diligence by counsel and the mediator in resolving a massive and difficult case. It is a tribute to all concerned that such a just settlement was consummated. As stated by Judge Anderson in *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991), settlements are compromises that "need not satisfy every single concern of the plaintiff class, but may fall anywhere within a broad range of upper and lower limits."

Here, the evidence is compelling that this complex and difficult case was settled based on arm's length dealings without a hint of collusion or bad faith behavior. Settlement talks broke off on several occasions even after the mediator had become involved. The settlement is a creative effort to address an otherwise intractable problem and consists of: (1) a $115 million cash component; (2) SCE&G property with an estimated value of $60-85 million to be transferred to the class and monetized; and (3) a $2 billion customer bill reduction component to be administered through the Public Service Commission ("PSC") rate setting proceedings. This creative approach to settling litigation when other approaches had failed is reflective of the hard bargaining that took place. The Court finds this factor supports the settlement.

B. The Relative Strength of the Parties' Cases and Uncertainty of Litigation on the Merits

This factor requires the Court to weigh the benefits to the class of the settlement against the strength of the defense and the expense and uncertainty of continued litigation. To say that this case was hotly contested would be an understatement. Virtually every move by either side in the litigation was met almost immediately by a strong response from the other side.

The uncertainty of this litigation was heightened by the fact that in scope and complexity, it was unparalleled in South Carolina legal history. Unlike many class actions or other complex cases, where there are well-established legal principles from prior cases, many of the issues confronting the parties were *sui generis*. The parties were plowing new ground on virtually every issue.

While the class presented a compelling liability case about the history of the V.C. Summer project, SCE&G vigorously defended its actions under the Base Load Review Act ("BLRA"). On its face, the BLRA appeared to give SCE&G protection after it applied for and received PSC approval for the advance financing costs it was charging its customers. For their part, plaintiffs recognized the importance of the BLRA and launched a well-reasoned attack on its constitutionality aided by the excellent efforts of the Attorney General.

Both parties realized that the ultimate fate of the BLRA as a defense for SCE&G's charges was highly uncertain. Had the BLRA been upheld against constitutional attacks, it is quite possible that the plaintiff class would have received nothing. Conversely, had it been voided as unconstitutional, SCE&G would have faced potentially insurmountable liability. A declaration of unconstitutionality would also have disrupted the PSC's parallel proceedings under the BLRA concerning the nuclear project costs. Under these circumstances, weighing the risks and uncertainties confronting both parties, the settlement under consideration was well-advised. The Court finds that this factor also supports approval of the settlement.

C. The Complexity, Expense, and Likely Duration of Additional Litigation

Up to the point that a tentative settlement was reached, the litigation had been highly complex and expensive to both sides. Vindication of plaintiffs' claims, if not settled,

would have come at a significant additional cost in time and effort. Assuming the class prevailed, extended appeals would undoubtedly have ensued, further delaying payment to the class.

There is no doubt that taking this case to trial would have imposed an enormous burden on both parties and the Court. This was truly a "bet the company" case for SCE&G, and it would have undoubtedly continued its vigorous, well-funded defense by extremely competent counsel. SCE&G had left no stone unturned in raising barriers to plaintiffs' efforts. Going forward, it could be expected to do no less. This Court must weigh the settlement against the substantial time and expense that further litigation would entail.

In light of the enormous complexity, uncertainty, expense, and extended duration of additional litigation, the Court finds the proposed settlement satisfies this factor.

D. The Solvency of the Defendant and the Likelihood of Recovery on a Litigated Judgment

In comparing the amount of the settlement with the potential liability of the settling defendant, it is appropriate to consider the defendant's ability to pay any subsequent judgment. As noted above, this was essentially "bet the company" litigation for SCE&G. It had collected billions of dollars in advance financing costs for a project that will never produce a watt of electricity. As a result of the financial fallout from this calamity, SCE&G's credit rating had already fallen significantly. In the PSC proceedings, SCE&G had already suggested bankruptcy as an option to deal with the liquidity challenge it could face.

While SCE&G eventually found a suitor in Dominion Energy, which is funding the settlement, including customer bill relief, and writing off other costs for the benefit of

SCE&G customers, Dominion did not consummate its acquisition until after the class reached this settlement with SCE&G. Had this case not been settled, and Dominion not gone forward with its acquisition, SCE&G would have faced a potentially ruinous verdict that may well have driven it into bankruptcy. A bankruptcy proceeding would have been expensive, extended, and highly uncertain in its outcome. To the extent the settlement avoided that enormously complicated scenario, it performed a public service. The Court finds that this factor also supports the proposed settlement.

E. The Degree of Opposition to the Settlement by Class Members

No settlement is perfect. Many class action settlements produce some opposition from a segment of the class. It is important for the Court to consider any such opposition. As the Fourth Circuit Court of Appeals has noted, "[t]he attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court." *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975), *cert. denied* 424 U.S. 967 (1976). But even opposition to the settlement by a large number of class members does not doom its approval. As the *Flinn* court stated, "a settlement is not unfair or unreasonable simply because a large number of class members oppose it." *Id*.

The class undertook an extensive notice campaign using a legal notification company that has designed over 400 class notices. The notice effort included providing individual notice to each of the owners of the 1,628,747 accounts identified by the parties as affected by the settlement. That notice was supplemented by published notice in the seven major state newspapers, a settlement website, and social media banner ads that linked to the settlement website. The notice not only covered the major points of the settlement, but directed class members with questions to contact the notice administrator

through the settlement website, email, the toll-free number, or a special post office box set up for inquiries. In addition, the notice contained the names and addresses of five class counsel firms that were available to answer questions. Thousands of class members made use of one or more of these information sources as detailed in the affidavit of the notice administrator.

The notice was distributed in sufficient time for class members to make any inquiries they wished through the information sources available and to decide whether to opt out of the action or object to the settlement. The record reflects that class members had at least a month to opt out and over two months to object. A month or more to respond to a class notice is adequate. *See, e.g., Torrisi v. Tucson Elec. Power Co.,* 8 F.3d 1370, 1375 (9th Cir. 1993) (31 days); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (26 days).

The website to which class members with inquiries were directed by the notice contained extensive supplemental information for class members. It had a tab headed "Important Documents" that contained the Settlement Agreement, selected case pleadings, the settlement preliminary approval order, both the long and short form of class notice, and other forms, including the opt out form. Another tab entitled "Frequently Asked Questions" contained 14 questions with answers and an invitation for class members with further inquiries to contact the other available sources of information.

The numerous documents made available to class members, including the individual notice, Settlement Agreement, "Important Documents", and "Frequently Asked Questions" website tabs all describe the settlement's major terms as including $115 million in cash, property with an estimated value of between $60-85 million, and $2 billion to be administered as rate relief by the PSC. The documents defined these three

components of the settlement as the "Common Benefit" and informed the class that Class counsel intended to ask for a fee "not to exceed 5% of the Common Benefit." The notice documents further provided that the fee would be paid from the cash and available proceeds from the property sales, which the settlement defined as the "Common Benefit Fund."

The Court finds that the extensive distribution of the notice and its explanation of the settlement, including the elements of the Common Benefit and the Common Benefit Fund, as well as the attorneys' fee request, meet the requirements of due process. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77, 94 S.Ct. 2140, 2150-52 (1974).

The class members to whom this notice was distributed include a broad spectrum of commercial accounts, as well as numerous individual customers. SCE&G's customers include businesses, law firms, government agencies, accounting firms, stockbrokers, financial advisors, and many other sophisticated entities with access to lawyers to review and raise questions or objections to the class notice. After this extensive notice campaign, none of these sophisticated entities has objected to the settlement. And only two total objections were received. One was from an individual homeowner. The other was filed by two law firms on behalf of seven individuals who collectively have ten of the 1,628,747 class customer accounts. These Objectors represent just seven-ten-thousandths of one percent of the class (.00067 percent), while the non-objecting class members represent 99.99938 percent of the class.[1]

[1] The class notice also permitted class members to opt out of the class and not be part of the settlement. Only 24 class members have opted out. Timely opt outs are free to initiate their own litigation against SCE&G and will not be bound by anything in this settlement. The fact that only 24 class members chose to leave this litigation also supports the reasonableness of the negotiated resolution.

With a class so large, such an infinitesimally small number of objectors is powerful evidence of the fairness of the settlement, as numerous courts have held. *See, e.g., In re Wachovia Corp. ERISA Litig.*, 2011 WL 5037183 (W.D.N.C. Oct. 24, 2011) (four objectors out of 150,000 class members); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009) (two objectors out of 128,000 class members); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756 (S.D.W. Va. 2009) (one objector out of 25,000 class members). This overwhelming lack of objections to the settlement terms supports the fairness, reasonableness, and adequacy of the settlement.

As noted, the class notice process did produce two objections. One was from an individual homeowner who does not object to the settlement as a whole or to the requested fee. Rather, he asks that his share of the settlement be paid all in cash, rather than any portion in rate relief. The Court finds that the parties' decision to fashion the class settlement with three components – cash, property, and funds for rate relief – was a reasonable response to the unique circumstances here. While an all cash settlement would have provided a larger immediate payment to class members, the Court is satisfied that the parties reasonably determined that applying $2 billion of the settlement consideration as rate relief has more beneficial long-term economic impact for class members as a whole. Accordingly, the individual homeowner's objection, while understandable, does not detract from the fairness, reasonableness, or adequacy of the settlement.

The second objection on behalf of seven customers holding ten accounts raised several questions concerning the settlement procedures and substance, as well as the amount of the attorneys' fee requested. The Court heard extensive argument on these objections at the May 14, 2019 hearing. Following that hearing, Class counsel conferred

with the Objectors' counsel in an effort to resolve their differences. As a result of those discussions, these objectors have agreed to withdraw their objections to the settlement and Class counsel have agreed to adjust their common benefit fee request as discussed later in this Order. Accordingly, there are no outstanding objections to the settlement.

F. Conclusion on Settlement Approval

The Court concludes that this settlement entered into by highly experienced counsel on both sides after almost fifteen months of intensive litigation is fair, reasonable, adequate, and conforms in all respects to the requirements of Rule 23. Accordingly, the settlement is approved.

III. ATTORNEYS' FEE AND COSTS

Having found that the class settlement is fair, reasonable, and adequate, it is now appropriate to consider Class counsel's request for an award of attorneys' fees and costs.

As noted earlier, Class counsel undertook an extensive notice campaign to provide all class members with detailed information concerning the settlement, including Class counsel's request for attorneys' fees. In that notice, Class counsel specifically informed the class that:

> At the outset in August 2017, Class Counsel agreed to handle the case on a "contingent" basis and to advance all costs and expenses on behalf of the Plaintiffs and the Class. Class Counsel intend to file a Motion for Attorneys' Fees and Expenses to be paid from the Common Benefit Fund, in an amount not to exceed 5% of the Common Benefit, inclusive of expenses advanced by Class Counsel.
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> Long Form Class Notice, ¶ A.5.

In response to the notice, no class member filed an objection to the potential five percent common benefit fee request. The settlement specified that the Common Benefit included

cash, transferred property, and customer bill relief components. It also stated that the fee would be paid out of the Common Benefit Fund.

On April 19, 2019, Class counsel filed their application for a common benefit attorneys' fee award and cost reimbursement in which they requested a three percent common benefit fee. This is forty percent less than the five percent to which the class made no objection. Class counsel's fee petition was posted on the settlement website available to all class members by following the instructions in the class notice. In the over two months between February 4, 2019, when the class notice was mailed, and the April 19, 2019 fee petition filing, no class member objected to the five percent fee request.

After the three percent fee petition was filed on April 19, 2019, only the seven objectors responded to it. Following the May 14, 2019 hearing, where the seven objectors opposed Class counsel's three percent common benefit fee request, counsel conferred in good faith in an effort to resolve the objection. In addition, Class counsel stated at the hearing that they had reduced their original five percent fee request to three percent in part to recognize the valuable assistance provided by the Attorney General on the BLRA constitutional issue. Nevertheless, they offered at the May 14, 2019 hearing to make an additional reduction in light of the Attorney General's comments that the fee should be further reduced.

Following discussions with the Objectors' counsel, and in further consideration of the Attorney General's comments, Class counsel agreed to further reduce their fee request from 3% of the maximum common benefit of $2.2 billion ($66 million) to $51 million, which is equivalent to 2.318% of the maximum common benefit of $2.2 billion. This reduction in their fee request of approximately 22.7% is in recognition of the strong advocacy of the Attorney General, and the arguments vigorously advanced by the

Objectors. In response to this reduction, the Objectors have withdrawn their objection to the adjusted fee request.

Class counsel submitted expert affidavits from three distinguished members of the South Carolina Bar in support of their original fee request. These experts are: The Honorable Alexander M. Sanders, Jr., former chief judge of the South Carolina Court of Appeals; John P. Freeman, distinguished University of South Carolina law professor and ethics expert; and Thomas H. Pope, III, an esteemed trial lawyer, former member of the South Carolina Board of Bar examiners, and a Fellow in the American College of Trial Lawyers. Each of these experts has analyzed the litigation and Class counsel's work regarding it. Their opinions on the original 3% fee request support the conclusion that the amended fee request is reasonable, and at the low end of the range of fees in similar complex mega class action.

Class counsel's work in this matter is distinguished by the fact that they were proceeding for the common benefit of the class in three different forums: the consolidated class actions in this Court, the consolidated federal court RCIO actions, and the PSC proceedings addressing the same controversy as the litigation. Class counsel's petition, supported by an affidavit from ORS outside counsel, sets forth in great detail the indispensable role Class counsel played in assisting ORS counsel in preparing for and presenting its case at the PSC. Due to the unprecedented complexity of the controversy, the ORS needed to hire outside counsel. Those counsel, in turn, needed the help of Class counsel to prepare adequately for the fast approaching PSC hearing that state law required to be conducted on an expedited schedule.

As it turned out, the PSC proceedings were essentially a preview of Class counsel's liability case against SCE&G, using depositions, documents, and other

information that Class counsel supplied to ORS counsel. By assisting the ORS, Class counsel recognized that they would be aiding the overall class effort and, in fact, that is exactly what happened. While the PSC hearings were ongoing, and extensive liability evidence against SCE&G was being admitted, SCE&G accelerated serious settlement discussions for both the class and the PSC matter. At the same time, Class counsel and ORS counsel were coordinating on how to craft an interlocking settlement that would give the SCE&G customer class members, who are also ratepayers in the PSC proceedings, the maximum benefit. The solution they reached achieved that goal.

The tasks confronting Class counsel during the litigation were substantial. Knowing that ORS counsel needed a liability case assembled in a matter of months, Class counsel forged ahead to review approximately 1.8 million documents using a custom-designed database that enabled Class counsel to mine this vast number of documents for critical evidence. As they extracted helpful evidence, Class counsel had to organize it for use at the numerous depositions they conducted with ORS counsel in several states extending into the first week of the PSC proceedings. ORS counsel made substantial use of these documents and depositions in their PSC presentation. The PSC proceedings undoubtedly increased the complexity of Class counsel's tasks and compressed their time frame while they were litigating this case against an ably-represented defendant.

This Court has previously reviewed the issue of attorneys' fees in class actions in *Anderson Memorial Hosp. v. W.R. Grace Co., et al.*, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008). The *Anderson Memorial Hosp*. order notes that in *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008), the Supreme Court recognized that the percentage of recovery method was the accepted way to award fees from a common

fund. Class counsel's petition cites numerous South Carolina class action cases adopting this method. The affidavit of Professor Freeman also reviews numerous South Carolina opinions awarding a percentage fee, including many in which he was the fee expert.

The Freeman and Pope affidavits analyze each of the relevant fee factors this Court summarized in *Anderson Memorial Hosp*.:

> Under South Carolina law, a fee award calls for the "the court [to] consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficult of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtains; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750, 760 (1997). An award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id*. Consideration of all six factors is necessary but none controls. *Id*.
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> *Anderson Memorial Hosp*., at 3-4.

Accordingly, while the Court will award a fee under the established Common Fund percentage method, it will also review the *Jackson v. Speed* factors, recognizing that some are more significant than others in a common fund setting. *Central Wesleyan College v. W.R. Grace & Co.*, 2:87-1860-8, 7-9 (D.S.C. Dec. 3, 2010).

A. Relevant Factors

1. <u>The nature, extent, and difficulty of the case</u>

This Court is very familiar with the case, having been its assigned jurist since its inception. The Court has observed the excellent advocacy on both sides and has ruled on several of the most contentious issues in the case. From substantive motions, such as motions to dismiss, to important discovery motions involving production and privilege issues, each has been hard fought on both sides. SCE&G has been represented by some

of the most experienced and able counsel in the Southeast. Their defense efforts were professional, vigorous, and unrelenting.

A major factor impacting the difficulty of this litigation is the unprecedented nature of the nuclear project's collapse after years of charges to customers under the BLRA. The BLRA posed a formable obstacle to plaintiffs' case and became the centerpiece of SCE&G's efforts to dismiss it. In response, Class counsel argued forcefully that the BLRA was unconstitutional as a deprivation of due process under the South Carolina Constitution. Working in concert with Class counsel, the Attorney General also forcefully urged the statute's unconstitutionality. The parties extensively briefed and argued this critical issue, which remained undecided at the time of settlement.

The difficulty of this matter was increased by several factors. First, there was no "road map" of how to prosecute a case of this type on novel legal theories. The vast majority of class actions are factually complex, but can call upon established principles of law in products liability, securities, antitrust, or similar fields. Here, Class counsel were blazing a new trail in South Carolina legal history. And they were doing so while assisting ORS counsel in what the ORS executive director described as "the largest and most complex utility ratemaking docket in South Carolina history."

Professor Freeman, who has great experience in difficult class actions, aptly noted, "this case was difficult on virtually every possible level." Attorney Pope, who has litigated numerous class actions himself, agreed:

> This has been a very difficult and unusual case against excellent, highly competent, and thorough adversaries. Class counsel undertook to do what many thought was an impossible task, and they did the job extremely well.

The nature, extent, and difficulty of this case rivals that of any litigation in this Court's experience. This factor strongly supports the requested fee.

2. The time necessarily devoted to the case

Class counsel's affidavit identifies 24,000 attorney hours and 2,278 paralegal hours spent on the litigation, including assisting the ORS and prosecuting the RICO actions in federal court. As Professor Freeman notes, "It is abundantly clear that this litigation . . . had been a battle royal fought on many fronts." Litigating novel and complex issues on multiple fronts required efficiency and coordination.

Class counsel's petition demonstrates a significant level of coordination. Some firms concentrated on pleadings and briefing. Others worked primarily on discovery. Yet others used special computer skills to analyze documents. Based on the excellence of the briefing and argument on numerous issues before this Court, the Court can appreciate the significant time devoted to the matter on both sides. Professor Freeman viewed the number of hours spent in light of the nature of the case and concluded that they "attest to the monumental size and complexity of the legal battles fought between plaintiffs and their adversaries." This Court finds that comment to be wholly appropriate.

Class counsel engaged in intensive discovery, including the examination and organizing of 1.8 million pages of documents, taking 26 depositions, engaging in extensive motion practice, and arguing novel legal issues, including the unconstitutionality of the BLRA. In addition, while this case did not have its own trial, Class counsel essentially sat "second chair" to ORS counsel at its "trial" in the PSC, where ORS counsel used much of Class counsel's work product during fifteen days of testimony at those hearings.

It is well established that the percentage of the recovery method is the accepted way to analyze fees to be paid from a common fund, as this Court held in *Anderson Mem. Hosp. v. W.R. Grace*, No. 92-CP-25-279 (Hampton Cty. Ct. Com. Pl. Dec. 10, 2008). In

contingency fee cases such as this, the degree of success and contingent nature of compensation are paramount factors. *In re Abrams &. Abrams, PA*, 605 F.3d 238 (4th Cir. 2010).

While the time spent litigating a case is a factor in assessing a reasonable fee, Judge Sol Blatt Jr. correctly described its subsidiary role in a common fund case, "[b]ecause this is a common fund case, and not a statutory fee shifting case, it would be error to unduly emphasize the hours spent over other relevant factors, such as the size of the fund created." *Central Wesleyan College v. W.R. Grace & Co.*, 2:87-1860-8, 8 (D.S.C. Dec. 3, 2010). The Fourth Circuit Court of Appeals in *In re Abrams &. Abrams, PA*, 605 F.3d 238 (4th Cir. 2010), reversed a trial court in a contingency fee case for unduly emphasizing time spent and hourly rates:

> The proper question involved, not some hourly rate in the abstract, but whether thirty-three percent was an acceptable fee for the contingency-based personal injury work performed by [plaintiffs'] counsel.
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> 605 F.3d at 248.

Judge Blatt emphasized the efficiency goal of common fund cases by stating: "A small fund created after many hours means less to a class than a larger fund created efficiently." *Central Wesleyan College v. W.R. Grace & Co.*, No. 2:87-1860-8, 9 (D.S.C. Dec. 3, 2010).

When awarding a percentage fee in a common fund case, courts often use a lodestar cross-check, which does not require the same exhaustive review as awarding a fee by the lodestar method in a fee shifting case. *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). Class counsel have filed an affidavit attesting to having spent 24,000 hours in prosecution of this case, the RICO action, assisting in the PSC proceedings, and attempting to intervene in SCE&G's challenge to interim electric rates in federal court. Class counsel have grouped the attorneys involved by years of

experience and have applied a discount to certain rates used in a standard hourly rate chart.

The Court has great familiarity with this case, knows the reputations and abilities of many of the counsel involved, and agrees with the prevailing view that a searching examination of counsel's affidavit is not warranted in this common fund contingency fee case. In a lodestar cross-check, a court can rely on time summaries. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005). Class counsel have filed an affidavit attesting to a lodestar of $18,609.189. The requested $51 million fee divided by this figure gives a 2.74 multiplier. This is well below multipliers approved in other South Carolina class actions. *See e.g., Mitchum v. Aiken Electric Cooperative, et al*, No. 2014-CP-02-00288 (Aiken Cty. Ct. Com. Pl. June 30, 2015) (4.16 multiplier).

Even if the Court were to invest the significant time necessary to review counsel's individual time records and found duplication of effort that reduced counsel's lodestar by fifty percent, the resulting multiplier (5.48)[2] would still be less than the 6 multiplier approved in another South Carolina class action. *See Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc.*, 2006 WL 8446464 (D.S.C. Aug. 15, 2006). It would also be lower than in many other class actions. *See, e.g., Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n.1 (S.D.N.Y. 1991) (8.74 multiplier); *Hainey v. Parrott*, 2007 WL 3308027, at *1-*3 (S.D. Ohio Nov. 6, 2007) (7.47 effective multiplier); *In re Boston & Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F. 2d 890, 894, 899 (1st Cir. 1985) (6 multiplier); and *In re Krispy Kreme Doughnuts, Inc. Sec. Litig.*, 2007 WL 119157,

[2] Reducing the $18,609,189 lodestar by 50% would yield $9,304,595. A $51 million fee divided by the reduced lodestar would give a 5.48 multiplier.

at *1-*3 (M.D.N.C. Feb. 15, 2007) (6 multiplier). Class counsel's efforts, as reflected in their success, the great risk they took, the difficulty of the case, the virtual lack of objections, and the contingency of compensation all support the reasonableness of the fee requested here. The lodestar cross-check supports the fee requested as well.

3. The professional standing of counsel

Class counsel's petition details the excellent experience and reputations of the firms involved. Professor Freeman describes Class counsel as "an All-Star lineup of leading lawyers." He notes that he has worked with many of Class counsel who he described as "consummate professionals." Judge Sanders and attorney Pope similarly extol the reputations of Class counsel in their affidavits. Class counsel's petition reinforces the experts' evaluations of their professional standing by reciting the hundreds of cases they have tried to verdict, the multi-million (and multi-billion) dollar settlements in which they have participated, and the great diversity of their experience across the civil litigation spectrum. The Objectors did not challenge the excellent professional standing of Class counsel. The class was ably represented by excellent counsel.

4. The contingency of compensation

Although they began this litigation into unchartered legal waters with only their own self-confidence for support, Class counsel unhesitatingly advanced hundreds of thousands of dollars and invested tens of thousands of hours on contingency fee contracts. Unlike other types of litigation taken on contingency, such as products liability or securities cases, where there is often some reasonable anticipation of recovery based on past experience, here the contingency was total. There was no track record of success in similar cases to alleviate the concern about taking the case on a contingency basis. On the contrary, a similar action in Florida had been dismissed with the class and its

counsel getting nothing. Other experienced South Carolina class action counsel had refused to get involved in the litigation at the outset, believing the contingency risk was too high.

The contingency of Class counsel's engagement in this risky litigation supports a substantial common fund fee. As the mediator in this case, Judge Joe Anderson, stated, "[C]ourts note that the riskier the case, the greater the justification for a substantial fee award." *Montague v. Dixie Nat'l Life Ins. Co.,* 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011). Likewise, as Judge Sanders attested in his affidavit, the contingency fee "serves an important public policy purpose in attracting the most highly skilled plaintiffs' counsel to take on enormously risky cases such as this." The Court agrees with Judge Sanders' evaluation of the degree of risk Class counsel undertook. Class counsel's commitment to this extremely risky venture and their expenditure of significant sums on behalf of the class attest to their commitment to their clients. The Objectors did not contest that this was a risky venture taken on a contingency basis. This factor weighs strongly in favor of a substantial common fund fee.

5. The beneficial results obtained

As Class counsel's petition notes, the most critical factor in determining the reasonableness of a class action fee award is the degree of success obtained. Through their efforts both in the class actions and in giving critical assistance to the ORS in the PSC proceedings, Class counsel have achieved an impressive result. The settlement consists of $115 million in cash, property valued between $60-85 million, and an additional $2 billion that the settlement permitted to be used for customer bill reduction in coordination with the PSC proceeding. As this Order recognizes, Class counsel's efforts

were of great assistance in helping the ORS resolve the PSC proceeding favorably to SCE&G's customers.

By allowing $2 billion of SCE&G's class action settlement obligation to be used at the PSC for customer bill relief, Class counsel ensured that the $2 billion would have maximum economic benefit for the class. As Class counsel's petition explains, the class receives a greater benefit by having $2 billion removed from the SCE&G rate base than by receiving $2 billion in cash. Removing $2 billion from the rate base also removes decades of future financing costs associated with that portion of the rate base. The Settlement Agreement leaves no doubt that the $2 billion portion of SCE&G's class settlement obligation resulted from Class counsel's efforts: "It is expressly agreed by the Parties that the benefit conferred in the PSC was provided as a direct result of this Litigation." This settlement gives the class an enforceable right to this rate relief that cannot be revoked at the PSC.

The total settlement of approximately $2.2 billion appears to be the largest private class action settlement in South Carolina history. It was achieved despite formidable opposition by excellent defense counsel. The result here is even more extraordinary when compared to the zero result that other counsel received for Florida utility customers with similar claims.

Class counsel have cited numerous mega fund cases awarding higher percentage fees than 2.3% requested here. *See, e.g., In re Black Farmers Discrimination Litig.*, 953 F. Supp.2d 82, 98 (D.D.C. 2013) (7.4% of a $1.2 billion fund); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1243 (D.N.M. 2016) (8.5% of a $940 million fund); *In re NASDAQ Mkt. Makers Antitrust Litig.*, 187 F.R.D. 465, 485-88 (S.D.N.Y. 1998) (14% of a $1 billion fund); *Wal-Mart Stores, Inc. v. Visa U.S.A, Inc.*, 396 F.3d 96, 106 (2nd Cir. 2005)

(6.5% fee of a $3.4 billion settlement); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 2018 WL 5839691, at *1 (S.D.N.Y. Nov. 8, 2018) (13% of a $2.3 billion fund); *In re Enron Corp. Sec. Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 827-28 (S.D. Tex. 2008) (9.5% fee of a $7.2 billion fund); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 973 (E.D. Tex. 2000) (7% fee of a $2.1 billion settlement); *In re Diet Drugs Litig.*, 553 F. Supp. 2d 442, 485 (E.D. Pa. 2008) (6.75% on a $6.4 billion settlement). Some courts have awarded even higher percentages. *See, e.g., In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *1, *8 (D. Kan. July 29, 2016) (awarding a one-third fee on $835 million settlement); *Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1239-40 (S.D. Fla. 2006) (31.33% fee on a $1.075 billion settlement). In another South Carolina mega fund case, counsel representing the State in its tobacco case were awarded a 3.2 percent fee on a $2.6 billion settlement. That case was still in its pleading stage and much less work had been done there than Class counsel have done here.

While there had not been a trial in this case at the time of the settlement, that is not unusual. Most class actions settle without a trial. At the time of settlement, Class counsel had been conducting intensive discovery, including examining and organizing 1.8 million pages of documents, taking 26 depositions, engaging in extensive motion practice, and arguing novel legal issues, including the unconstitutionality of the BLRA. In addition, while this case did not have its own trial, Class counsel essentially sat “second chair” to ORS counsel at its “trial” in the PSC, where ORS used much of Class counsel’s work product during fifteen days of testimony.

It is appropriate to pay counsel’s fee from the cash portion of the settlement, even though the Common Benefit contains non-cash components (property and rate relief). This payment method is common in any class action where part of the class relief is not

available to pay class counsel's fee. In *Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc.*, 2006 WL 8446464 (D.S.C. Aug. 15, 2006), for instance, the court dealt with a settlement involving a cash payment and defendants' agreement to change its business practices. Judge Floyd found that the non-cash component had value to the class and that the percentage should be applied to the entire benefit, with the fee to be paid out of the cash. Likewise, in *In re Domestic Air Transport. Antitrust Litig.*, 148 F.R.D. 297 (N.D. Ga. 1993), the court dealt with a settlement consisting of cash and travel vouchers for airline customers who alleged that the airlines had fixed ticket prices. The court awarded a percentage fee on the entire value of the settlement, with the fee to be paid from the cash. In doing so, the court rejected the argument that the attorneys should be given travel vouchers for a portion of their fee.

Here, the settlement agreement calls for Class counsel's fee to be paid from the Common Benefit fund "within ten business days after the Effective Date of Settlement." Settlement Agr., ¶ 50. The Objectors do not object to Class counsel's fee being paid from the money in the Common Benefit Fund.

6. <u>The customary legal fee for similar services</u>

This settlement of approximately $2.2 billion qualifies as a mega settlement. A body of jurisprudence has arisen concerning the fee range in such mega settlements. Some courts have discerned the range to be five to ten percent. *In re Black Farmers Discrimination Litig.*, 953 F. Supp.2d 82, 98 (D.D.C. 2013). Others have found a broader range. For instance, the court in *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000), concluded that mega fund awards of fifteen percent were common. Class counsel's petition cites numerous instances of mega fund class counsel fees ranging from six and a half percent to fourteen percent, with some much higher.

In comparison to these representative cases, Class counsel's $51 million requested fee, which equates to approximately 2.3% of the maximum Common Benefit, is extremely modest. It is below the 3.2 percent that South Carolina's counsel received on a $2.6 billion settlement in the State's tobacco cost reimbursement case that was settled in the pleading stage. It is certainly at the low range of accepted fees in mega fund cases. And it is significantly below the five percent fee that Class counsel told the class they might request, to which no one objected. The Court finds that the $2 billion that SCE&G confirmed was part of its class settlement obligation is part of the Common Benefit, and that a $51 million fee is fair and reasonable to class members.

Alternatively, if the Court were to consider the settlement as involving only its cash and transferred property components, such a settlement in the range of $175-200 million ($115 million cash plus $60-85 million in property value) would fall under the traditional common fund fee jurisprudence. In *Anderson Memorial Hosp.*, this Court reviewed South Carolina authority on traditional class action settlements and found that a one-third fee request was "well within the range of fees generally approved by courts in class actions." Slip op. at 7. Federal Judge Bryan Harwell reached the same conclusion in *Dewitt v. Darlington Cty., S.C.*, 2013 WL 6408371, at *9 (D.S.C. Dec. 6, 2013). Likewise, the mediator in this case, Judge Joseph Anderson, awarded a 33% fee in *Montague v. Dixie Nat'l Life Ins. Co.*, 2011 WL 3626541, *2 - *4 (D.S.C. Aug. 17, 2011), finding such a fee "well within the range of what is customarily awarded in settlement class actions."

The requested fee computed as a percentage of the cash and transferred property value will likely fall between 25.5%-29.1% depending on the ultimate sales prices of the

transferred property.[3] Regardless of whether the final fee percentage is at the high or low end of that range, the fee will fall within the customary South Carolina complex case contingency fee of 33.3%-50%. *See Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483, 489 (Ct. App. 1998). The 25.5%-29.1% fee range is also well within the traditionally accepted common fund fee range in complex class actions of 19-45%. *Anderson Memorial Hosp.*, slip op. at 7.

Accordingly, the Court finds the requested fee of $51 million is reasonable.

B. RICO Counsel

As set forth in Class counsel's petition, several of the firms involved with them in the RICO federal class actions were not counsel of record in this litigation. Nevertheless, Class counsel agree that these RICO counsel contributed to the creation of the common fund through their efforts in the RICO actions. Moreover, the settlement in this action also settled the federal RICO claims by this class of SCE&G customers against SCE&G. The Court finds it appropriate to include these RICO counsel as participants in the common fund fee award. In *Petition of Crum*, 196 S.C. 528, 14 S.E.2d 21 (1941), the South Carolina Supreme Court held that an attorney whose efforts assisted in the creation of a fund for those he did not formally represent was entitled to participate in a fee from that fund. The RICO counsel fall into that category here.

C. The Office of Regulatory Staff

Class counsel have also requested that the Court permit the ORS to participate in the common fund by allowing it to be reimbursed for a portion of the $826,467.50 it spent

[3] If the property brings $85 million, the $51 million fee will be 25.5% of $200 million, consisting of cash ($115 million) and property ($85 million). If the property brings $60 million, the fee of $51 million will be 29.1% of $175 million, consisting of cash ($115 million) and property ($60 million).

for outside counsel fees at the PSC proceedings. Class counsel agree to having the ORS fee reimbursement considered part of their $51 million Common Benefit fee.[4]

While Class counsel lent critical assistance to ORS counsel in the PSC proceedings, ORS counsel's effort in turn played a role in securing the class action Common Benefit. By publicly introducing the liability evidence Class counsel had secured, the ORS undoubtedly drove home to SCE&G the wisdom of resolving the class actions as well as the PSC proceedings. SCE&G's settlement discussions with the class intensified during the PSC proceedings. And both actions settled almost simultaneously, with the class Settlement Agreement signed by the class on November 21, 2018, the day after SCE&G made its ultimately successful settlement offer at the PSC.

The Court also appreciates that coordination between the ORS and the class has helped to maximize the economic benefit of the $2 billion class benefit by utilizing that $2 billion for customer bill relief in the PSC proceedings, thus saving class members decades of financing costs on that amount. Having helped to achieve these benefits for the class, the efforts of ORS counsel are appropriately reimbursed from the class action common fund. *Petition of Crum*., 196 S.C. 528, 14 S.E.2d 21 (1941).

IV. CLASS REPRESENTATIVES SERVICE AWARDS

Class counsel have requested that the Court approve class representative service awards in the amount of $2,500 to each of the class representatives. The notice alerted the class to this request and nobody has objected to it. The Court finds that these service awards are warranted in that class representatives were each required to prepare for and

[4] Because Class counsel have agreed to reduce their requested fee from approximately $66 million to $51 million, ORS has agreed to a proportionate reduction in its reimbursement.

attend a deposition and otherwise cooperate with Class counsel. Service awards are a well-established way to recognize the commitment of class representatives. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000).

V. CASE COSTS AND EXPENSES

It is appropriate for the class to pay the costs of the effort on its behalf. *Anderson Memorial Hosp.*, slip op. at 8. Class counsel have requested $864,912.40 in expenses and provided an affidavit averring that this amount was spent in pursuit of this litigation and the related proceedings. The Objectors have withdrawn their objection to this expense reimbursement. The Court finds it appropriate to rely on Counsel's affidavit in support of the validity of these expenses, and approves their repayment.

CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT:**

1. This Court has jurisdiction over Defendants and all class members (including all Objectors), and the claims asserted in this action for purposes of the settlement.

2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.

3. This Court **GRANTS** Plaintiffs' Motion for Final Approval of Class Action Settlement and finds that it is in all respects, fair, reasonable, and in the best interest of the Class. Therefore, all members of the class who have not opted out are bound by this Order finally approving the settlement.

CLASS CERTIFICATION

4. The previously certified class set forth below (the "Class") is now finally certified, solely for purposes of this settlement, pursuant to South Carolina Rule of Civil Procedure 23(a) and (b)(3):

> All customers of Defendant SCE&G (including companies, corporations, partnerships, and associations) who have been assessed advanced financing costs for the construction of 2 nuclear reactor units at Defendant SCE&G and SCANA's Jenkinsville, South Carolina site from the first collection of any cost recovery associated with nuclear construction to present.

5. The Court find that certification of the Class solely for purposes of this settlement is appropriate in that (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members; (c) Plaintiffs' claims are typical of the Class; (d) Plaintiffs have fairly and adequately protected the interests of the Class and will continue to do so; (e) Class counsel is adequate; and (f) a class action is the superior method for the fair and efficient adjudication of this controversy.

6. Richard Lightsey, LeBrian Cleckley, and Phillip Cooper are designated as representatives of the Class ("Class Representatives").

7. Strom Law Firm, LLC; Richardson Patrick Westbrook & Brickman, LLC; Bell Legal Group; Speights & Solomons, LLC; Lewis Babcock, LLP; Savage, Royal & Sheheen, LLP; McGowan, Hood & Felder, LLC; Coleman & Tolen, LLC; Galvin Law Group, LLC; McCallion & Associates, LLP; Holman Law, PC; Janet, Janet & Suggs, LLC; and The Law Offices of Jason E. Taylor, PC are included as Class Counsel.

CLASS NOTICE

8. Notice to the Class complied with the requirements of South Carolina Rule of Civil Procedure 23(c) and due process, constituted the best notice practicable under the circumstances, and was due and sufficient notice to all persons entitled to notice of the settlement. The Court approved the forms of notice to the Class.

9. With respect to the Class, this Court finds that certification is appropriate under South Carolina Rule of Civil Procedure 23(a) and 23(b)(3). Notice was given to current SCE&G customers by bill inserts from SCE&G; former customers were given notice by email and/or mail in accordance with the Settlement Agreement and this Court's preliminary approval order. The Class notice was also published in *The Columbia State*, *The Greenville News*, *The Charleston Post & Courier*, *The Aiken Standard*, *The Beaufort Gazette / Island Packet*, *The Rock Hill Herald*, and *The Myrtle Beach Sun News*. Finally, Class counsel set up a settlement website and a settlement call center to provide additional information and to answer inquires from Class members. These forms of Class notice fully complied with the requirements of Rule 23(c) and due process, constituted the best notice practicable under the circumstances, and were due and sufficient notice to all persons entitled to notice of the settlement of this lawsuit.

OBJECTIONS AND OPT-OUTS

10. After the extensive notice (described above) provided to Class members, including individual notice to the owners of over 1.6 million SCE&G accounts, there have been only two objections to the settlement. Specifically, seven Class members—Patsy G. Hancock, Thomas Powell, Denise Powell, Patricia Ann Mohr, James Washington, III, Lynda Askins Miller, and Marie McMahan Askins (the "Objectors")—filed a joint Objection to Final Approval of Class Action Settlement. And one additional Class member (Julius

Williamson) submitted an individual objection. These objectors represent only .00067% of the Class. The Court has reviewed the Williamson objection and, for the reasons stated previously, finds it to be without merit. The joint objection has been withdrawn.

11. Twenty-four Class members have opted out of the settlement.

CLASS COMPENSATION

12. The Court concludes that the Common Benefit, consisting of: (1) a $115 million cash payment; (2) SCE&G property valued at approximately $60-85 million; and (3) $2 billion in customer bill reduction to be administered by the PSC is fair, reasonable, and adequate.

AWARD OF ATTORNEY'S FEES AND COSTS

13. The Court has considered Class counsel's Application for Reimbursement of Expenses and a Contingency Fee Award, the joint Objectors' objections to Class counsel's request for attorneys' fees (subsequently withdrawn), the Attorney General's comments regarding the Class counsel fee, and Class counsel's Memorandum in Support of Motion for Final Approval of Class Action Settlement. The Court also heard extensive argument on Class counsel's request for attorneys' fees at the fairness hearing on May 14, 2019, the record of which is incorporated by reference.

14. Class counsel seek $51 million from the Common Benefit Fund for their attorneys' fee award. Class counsel also request reimbursement of expenses in the amount of $864,912.40. Defendants do not object to Class counsel's request for attorneys' fees and costs. The joint Objectors have withdrawn their challenge to Class counsel's application for attorneys' fees and costs in light of Class counsel's reduction in their requested fee as discussed herein. The Attorney General submitted comments on

the original fee request, asking that the Court consider the Attorney General's efforts in deciding the fee issue, which the Court has done.

15. The South Carolina Supreme Court has recognized that the percentage of recovery method is the accepted way to award fees from a common fund. *See Layman v. State*, 376 S.C. 434 (2008). The Court considers the following six factors when determining the reasonableness of attorneys' fees: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289 (1997). In determining the attorneys' fee award, the Court has considered all of these factors.

16. The settlement consists of $115 million in cash, property valued between $60-85 million, and an additional $2 billion in bill reduction through coordination with the proceedings before the PSC. The component of the settlement available to pay the attorneys' fees within ten days of the Effective Date, as required by the Settlement Agreement, is the cash portion of the fund. The Court finds that the requested fee of $51 million, approximately 2.3% of the Common Benefit, is fair and reasonable, applying the factors outlined above.

17. The Court hereby **GRANTS** Class counsel's Application for Reimbursement of Expenses and a Contingency Fee Award, as amended, and awards attorneys' fees in the amount of $51 million and costs in the amount of $864,912.40.

18. The Court also **GRANTS** Class counsel's request for service awards for the Class Representatives in the amount of $2,500 each. The Court finds that these payments are justified by the Class Representatives' service to the Class.

OTHER PROVISIONS

19. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

20. Neither the Settlement Agreement, preliminary approval order, this Order finally approving the settlement, nor any of their provisions, nor any of the documents, negotiations, or proceedings relating in any way to the settlement, shall be construed as or deemed to evidence of an admission or concession of any kind by any person, including Defendants, nor of the certifiability of any class other than the Class described herein, and shall not be offered or received in evidence in this or any other action or proceeding except in an action brought to enforce the terms of the Settlement Agreement or except as may be required by law or court order.

21. This action is hereby dismissed with prejudice. However, with the consent of the Parties, the Court retains jurisdiction for the purposes of enforcing the terms of the settlement and of this Final Judgment and Order.

DONE AND ORDERED.

Dated: _____

_____

John C. Hayes, III

Presiding Judge

Hampton Common Pleas

Case Caption: Richard Lightsey VS South Carolina Electric & Gas

Case Number: 2017CP2500335

Type: Order/Approval Of Settlement

So Ordered

s/John C. Hayes III 2049