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S.C. SUPREME COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA COLUMBIA DIVISION

Clyde Marcus Jones, II; Dennis Phillips, and Deborah Phillips, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Duke Energy Corporation and Duke Energy Carolinas, LLC,

Defendants.

Civil Action No.: 3:24-cv-1281-MGL

DEFENDANTS' ANSWER TO AMENDED CLASS ACTION COMPLAINT AND AFFIRMATIVE DEFENSES

NOW COME Defendants Duke Energy Corporation ("Duke Energy") and Duke Energy Carolinas, LLC ("Duke Energy Carolinas") (collectively, "Defendants"), by and through counsel, and for their Answer to Plaintiffs' First Amended Class Action Complaint (hereinafter, the "FAC"), state as follows:

NATURE OF THE ACTION

1. Defendants admit that this is a civil action in which Plaintiffs seek compensatory and punitive damages, but deny that Plaintiffs are entitled to any such relief. Defendants deny all remaining allegations in Paragraph 1.

2. Defendants admit the allegations in Paragraph 2.

3. Defendants lack sufficient information to admit or deny the allegations in Paragraph 3 and therefore deny them.

4. Defendants admit that the manufacture of PCBs in the United States has been prohibited since 1978 pursuant to an Act of Congress. Defendants further admit that EPA has classified PCBs as a probable carcinogen, but deny that this classification occurred as early as the 1970s. To the extent further response is required, Defendants deny the remaining allegations in Paragraph 4.

5. Defendants deny the allegations in Paragraph 5.

6. Defendants admit that EPA has classified PCBs as a probable carcinogen. The EPA informational document cited in Paragraph 6 speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 6 and therefore deny them.

7. The EPA informational document cited in Paragraph 7 speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 7 and therefore deny them.

8. The May 22, 2013 press release cited in footnote 1 to Paragraph 8 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants deny the allegations in Paragraph 8 to the extent they incorrectly suggest that Defendant Duke Energy, a holding company, controlled or was involved in the Mosquito Control Program, which was the within the purview of Defendant Duke Energy Carolinas. All remaining allegations of Paragraph 8 are denied.

9. Defendants admit that Lake Wateree was created in 1919. Defendants deny the remaining allegations in Paragraph 9.

10. Defendants lack sufficient information to admit or deny the allegations in the first sentence of Paragraph 10 and therefore deny them. The allegations of the second sentence

of Paragraph 10 state legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations of the second sentence of Paragraph 10.

11. Defendants deny the allegations in Paragraph 11.

12. Defendants deny the allegations in Paragraph 12.

13. Defendants deny the allegations in Paragraph 13.

14. Defendants deny the allegations in Paragraph 14.

15. Defendants admit that Plaintiffs seek damages for an alleged invasion and infringement upon their properties and property rights, but deny that Plaintiffs are entitled to any such relief. Answering further, Defendants deny all remaining allegations in Paragraph 15.

16. Defendants admit that Plaintiffs seek to represent a class consisting of waterfront residents of Lake Wateree purporting to hold littoral and/or riparian rights. Defendants deny all remaining allegations in Paragraph 16.

JURISDICTION AND VENUE

17. Defendants lack sufficient knowledge to admit or deny the allegations in Paragraph 17 and therefore deny them.

18. Defendants lack sufficient information to admit or deny the allegations in Paragraph 18 and therefore deny them.

19. Defendants admit that Duke Energy is organized in the state of North Carolina a headquarters and principal place of business located at 525 S. Tryon St., Charlotte, NC 28202. Defendants further admit that Defendant Duke Energy is a publicly traded holding company of Defendant Duke Energy Carolinas and other utilities. Defendants deny all remaining allegations in Paragraph 19.

20. Defendants admit that Defendant Duke Energy Carolinas is a limited liability corporation organized in the state of North Carolina with a headquarters and principal place of business located at 550 S. Tryon St., Charlotte, NC 28202. Defendants deny all remaining allegations in Paragraph 20.

21. Defendants admit that Duke Energy is a holding company for Duke Energy Carolinas, that Duke Energy Carolinas operates in North Carolina and in South Carolina, and that Duke Energy Carolinas provides electric power and related services to approximately 860,000 customers across South Carolina, including customers in the vicinity of Lake Wateree. Defendants deny all remaining allegations in Paragraph 21.

22. Defendants admit that Defendant Duke Energy Carolinas owns the property necessary to operate Lake Wateree as a hydroelectric impoundment. Defendants deny all remaining allegations in Paragraph 22.

23. In response to the first sentence of Paragraph 23, Defendants admit that Duke Energy Carolinas and its predecessors have owned and operated power facilities in South Carolina since the early 1900s. The allegations of the second sentence of Paragraph 23 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny that Defendant Duke Energy—a holding company—has had systemic or continuous contact with South Carolina or that it has owned or operated power facilities in South Carolina. To the extent further response is required, Defendants deny all remaining allegations in Paragraph 23.

24. Defendants admit that Defendant Duke Energy Carolinas and its predecessors have continuously done business in South Carolina since the creation of Lake Wateree. Except as expressly admitted herein, the allegations in Paragraph 24 are denied.

25. The allegations of Paragraph 25 of the First Amended Complaint refer to certain public statements by Defendant Duke Energy and by Defendant Duke Energy Carolinas. Plaintiffs are referred to the identified publications and Defendants deny any allegations inconsistent with their terms. Defendants deny all remaining allegations in Paragraph 25.

26. Defendants deny the allegations in Paragraph 26.

27. The allegations in Paragraph 27 state legal conclusions to which no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations in Paragraph 27 and therefore deny them.

28. Defendants admit that Plaintiffs purport to bring claims under the laws of South Carolina. Defendants deny all remaining allegations in Paragraph 28.

29. Defendants admit that this Court has subject matter jurisdiction, but deny the remaining allegations in Paragraph 29.

30. Defendants admit that Defendant Duke Energy Carolinas regularly transacts business in the State of South Carolina, but deny the remaining allegations in Paragraph 30.

31. Defendants admit that Plaintiffs bring claims based on events alleged to have occurred in Kershaw County, South Carolina. Defendants deny all remaining allegations in Paragraph 31, including denying that they engaged in the alleged acts or omissions.

STATEMENT OF FACTS

A. The Rise of PCBs

32. Defendants admit the allegations in Paragraph 32.

33. Defendants lack sufficient information to admit or deny the allegations in Paragraph 33 and therefore deny them.

34. Defendants admit the allegations in Paragraph 34.

35. Defendants lack sufficient information to admit or deny the allegations in Paragraph 35 and therefore deny them.

36. The Public Health Reports publication cited in footnote 2 to Paragraph 36 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 36 and therefore deny them.

37. The 1999 U.S. Geological Survey publication cited in footnote 3 to Paragraph 37 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 37 and therefore deny them.

38. The 1999 U.S. Geological Survey publication cited in footnote 4 to Paragraph 38 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 38 and therefore deny them.

39. The 1999 U.S. Geological Survey publication cited in footnote 5 to Paragraph 39 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 39 and therefore deny them.

40. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 40 and therefore deny them.

41. The 1972 U.S. Department of Agriculture report cited in footnote 6 to Paragraph 41 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms.

Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 41 and therefore deny them.

42. The 1972 U.S. Department of Agriculture report referenced in Paragraph 42 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 42 and therefore deny them.

43. Defendants deny the allegations in Paragraph 43.

44. Defendants admit that the manufacture of PCBs in the United States has been prohibited since 1978 pursuant to an Act of Congress. To the extent further response is required, Defendants deny the remaining allegations in Paragraph 4. .

B. PCB Use in South Carolina

45. Defendants lack sufficient information to admit or deny the allegations in Paragraph 45 and therefore deny them.

46. Defendants lack sufficient information to admit or deny the allegations in Paragraph 46 and therefore deny them.

47. Defendants admit that Lake Wateree was created in 1919 through the damming of the Wateree River and that it is one of South Carolina's oldest remaining man-made reservoirs. Defendants deny the remaining allegations in Paragraph 47. Answering further, Defendants state that footnote 7 to Paragraph 47 of the FAC states no allegations against Defendants and therefore no response to the allegations in footnote 7 is required. To the extent a response is required, the Defendants deny the allegations.

48. The Catawba-Wateree Shoreline Management Plan cited in footnote 8 to Paragraph 48 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants deny all remaining allegations in Paragraph 48.

49. The allegations of Paragraph 49 contain conclusions of law to which no response is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 49. Defendants deny all remaining allegations in Paragraph 49.

50. Defendants state that the Catawba-Wateree Relicensing website cited in footnote 9 to Paragraph 50 of the FAC speaks for itself, and Defendants deny any allegations inconsistent with its terms.

51. The Catawba-Wateree Relicensing Agreement cited in footnote 10 to Paragraph 51 of the FAC speaks for itself, and Defendants deny all allegations inconsistent with its terms. Defendants specifically deny that the Catawba-Wateree Relicensing Agreement contains the "promise" alleged in Paragraph 51 of the FAC. Defendants deny all remaining allegations in Paragraph 51.

52. Defendants admit the allegations in Paragraph 52. Responding further, Defendants state that the Catawba-Wateree Relicensing Agreement cited in footnote 11 to Paragraph 52 of the FAC speaks for itself, and Defendants deny all allegations inconsistent with its terms.

53. The allegations in Paragraph 53 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants deny the allegations in Paragraph 55.

56. Defendants lack sufficient information to admit or deny the allegations in Paragraph 56 and therefore deny them.

57. Defendants lack sufficient information to admit or deny the allegations in Paragraph 57 and therefore deny them.

58. Defendants admit that the study referencing Paragraph 58 was conducted but deny that the study was conducted "to address concerns over the levels of contamination in the reservoir." All remaining allegations of Paragraph 58 of the FAC are denied.

59. Defendants admit that the study did not show contamination at excessive levels but deny the remaining allegations in Paragraph 59.

60. Defendants deny the allegations in Paragraph 60.

61. Defendants lack sufficient information to admit or deny the allegations in Paragraph 61 and therefore deny them.

62. Defendants lack sufficient information to admit or deny the allegations in Paragraph 62 and therefore deny them.

63. Defendants admit that SCDHEC has issued fish consumption restrictions for Lake Wateree since 2009 but deny the remaining allegations in Paragraph 63.

64. Defendants admit the allegations in Paragraph 64.

65. Defendants deny the allegations in Paragraph 65.

66. Defendants are without information sufficient to admit or to deny the allegations in Paragraph 66, and therefore deny the same.

67. Defendants deny the allegations in Paragraph 67. Specifically, Defendants deny any connection between themselves or their actions and the fish consumption advisories and

thus further deny that they had any obligation to warn class members or the public of the alleged dangers.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69.

70. The allegations of Paragraph 70 of the FAC are legal conclusions to which no response is required. To the extent that a response is required, the allegations in Paragraph 70 are denied.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

C. Duke Energy Mosquito Control Program

73. The 2013 press release cited in Paragraph 73 and footnote 12 of the FAC speaks for itself, and Defendants deny any allegation inconsistent with its terms. Defendants specifically deny the allegations in Paragraph 73 to the extent they incorrectly suggest that Defendant Duke Energy, a holding company, controlled or was involved in the Mosquito Control Program, which was the within the purview of Defendant Duke Energy Carolinas. All remaining allegations of Paragraph 73 of the FAC are denied.

74. Defendants admit that the Mosquito Control Program operated over the course of 93 years and terminated in 2016. Defendants deny the allegations in Paragraph 74 to the extent they incorrectly suggest that Defendant Duke Energy, a holding company, controlled or was involved in the Mosquito Control Program, which was the within the purview of Defendant Duke Energy Carolinas.

75. Defendants admit that the threat of malaria presented a public health concern near some hydroelectric impoundments. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 75 and therefore deny them.

76. Defendants admit that creating reservoirs to support hydroelectric stations created a habitat for mosquito populations. Except as expressly admitted here, the allegations in Paragraph 76 are denied.

77. Defendants admit that the Mosquito Control Program, which ran for 93 years, was a public health program implemented to prevent the spread of mosquito-carried disease near reservoirs. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 77 and therefore deny them.

78. Defendants admit that Defendant Duke Energy Carolinas and its predecessors undertook the Mosquito Control Program to combat the threat of malaria presented on some reservoirs. Defendants deny the remaining allegations in Paragraph 78.

79. Defendants deny the allegations in Paragraph 79.

80. Defendants deny the allegations in Paragraph 80.

81. Defendants admit the allegations in Paragraph 81 only insofar as they are an accurate representation of statements made by George Swearingen, Environmental Health Manager for Duke Power Company, during the proceedings of a 1970 workshop on mosquito control in North Carolina. Except as expressly admitted herein, the allegations in Paragraph 81 are denied.

82. Defendants admit the allegations in Paragraph 82 only insofar as they are an accurate representation of statements made by George Swearingen, Environmental Health Manager for Duke Power Company, during the proceedings of a 1970 workshop on mosquito

control in North Carolina. Except as expressly admitted herein, the allegations in Paragraph 82 are denied.

83. The allegations of Paragraph 83 refer to documents concerning a 1970 workshop. Plaintiffs are referred to those documents and Defendants deny any allegations inconsistent with them. Defendants deny all remaining allegations in Paragraph 83.

84. Defendants admit that the allegations in Paragraph 84 are an accurate representation of a statement made by Mr. Don F. Ashton, an Entomologist for the North Carolina State Board of Health, during the proceedings of the 1970 workshop on mosquito control in North Carolina. To the extent further response is required, Defendants lack sufficient information to admit or deny the allegations in Paragraph 84 and therefore deny them.

85. The report of the proceedings of the 1970 workshop on mosquito control in North Carolina cited in Paragraph 85 speaks for itself, and Defendants deny any allegations inconsistent with its terms. Defendants deny Plaintiffs' allegation in Paragraph 85 that "[t]he goal of this workshop was clear." To the extent further response is required, Defendants lack sufficient information to admit or deny the allegations in Paragraph 85 and therefore deny them.

86. Defendants admit that representatives of the U.S. Army and U.S. Navy presented during the 1970 workshop on mosquito control in North Carolina, but deny that the allegations in Paragraph 86 accurately characterize the substance of their presentations. All remaining allegations of Paragraph 86 of the FAC are denied.

87. Defendants deny the allegations in Paragraph 87.

88. The allegations of Paragraph 88 refer to two affidavits submitted by Plaintiffs as Exhibits A and B to the FAC. Plaintiffs are referred to those affidavits for their contents.

Defendants deny the allegations in the affidavits appended as Exhibits A and B to the FAC. All remaining allegations of Paragraph 88 are denied.

89. The allegations of Paragraph 89 refer to two affidavits submitted by Plaintiffs as Exhibits A and B to the FAC. Plaintiffs are referred to those affidavits for their contents. Defendants deny the allegations in the affidavits appended as Exhibits A and B to the FAC. All remaining allegations of Paragraph 89 re denied.

90. Defendants deny the allegations in Paragraph 90.

91. Defendants deny the allegations in Paragraph 91.

92. Defendants deny the allegations in Paragraph 92.

93. Defendants deny the allegations in Paragraph 93.

94. Defendants deny the allegations in Paragraph 94.

95. Defendants deny the allegations in Paragraph 95.

96. Defendants lack sufficient information to admit or deny the allegations in Paragraph 96 and therefore deny them.

97. Defendants lack sufficient information to admit or deny the allegations in Paragraph 97 and therefore deny them.

98. Defendants deny the allegations in Paragraph 98.

99. Defendants deny the allegations in Paragraph 99.

100. The 2013 Press Release cited in Paragraph 100 and footnote 13 of the FAC speaks for itself, and Defendants deny any allegations inconsistent with its terms. Defendants specifically deny the allegations in Paragraph 100 to the extent they incorrectly suggest that Defendant Duke Energy, a holding company, controlled or was involved in the Mosquito Control Program, which was the within the purview of Duke Energy Carolinas. Defendants

further deny the allegation in Paragraph 100 that they conducted any "self-serving" study. All remaining allegations of Paragraph 100 of the FAC are denied.

101. The allegations of Paragraph 101 refer to regulatory filings. Plaintiffs are referred to those filings and Defendants deny any allegations inconsistent with them. All remaining allegations of Paragraph 101 are denied.

102. The allegations of Paragraph 102 refer to regulatory filings. Plaintiffs are referred to those filings and Defendants deny any allegations inconsistent with them. All remaining allegations of Paragraph 102 are denied.

103. Defendants deny the allegations in Paragraph 103. Defendants specifically deny that they have any obligation or duty to conduct remediation or mitigation activities to address the alleged presence of PCBs in Lake Wateree.

104. Defendants deny the allegations in Paragraph 104.

105. Defendants deny the allegations in Paragraph 105 and specifically deny the accuracy of the Glover and Gundersen article cited in footnote 14 to Paragraph 105 of the FAC insofar as its findings and conclusions relate to Defendants.

106. Defendants deny the allegation in Paragraph 106.

107. Defendants deny the allegations in Paragraph 107. Specifically, Defendants deny that they utilized unsafe spent motor and transformer fuels or otherwise applied PCBs to Lake Wateree in the course of implementing the Mosquito Control Program. Defendants further deny the allegations in Paragraph 107 to the extent they incorrectly suggest that Defendant Duke Energy, a holding company, controlled or was involved in the Mosquito Control Program, which was the within the purview of Defendant Duke Energy Carolinas.

108. Defendants deny the allegations in Paragraph 105 and specifically deny the accuracy of the Glover and Gundersen article insofar as its findings and conclusions relate to Defendants.

109. Defendants deny the allegations in Paragraph 109.

110. Defendants deny the allegations in Paragraph 110.

111. Defendants deny the allegations in Paragraph 111.

112. Defendants deny the allegations in Paragraph 112.

113. Defendants deny the allegations in Paragraph 113.

114. Defendants lack sufficient information to admit or deny the allegations in Paragraph 114 and therefore deny them.

115. Defendants admit that the SCDHEC has issues fish consumption advisories for Lake Wateree but deny the remaining allegations in Paragraph 115.

116. Defendants deny the allegations in Paragraph 116.

117. Defendants deny the allegations in Paragraph 117.

118. Defendants deny the allegations in Paragraph 118.

119. Defendants lack sufficient information to admit or deny the allegations in Paragraph 119 and therefore deny them.

120. The allegations in Paragraph 120 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 120.

CLASS ALLEGATIONS

121. Defendants admit that Plaintiffs bring this action on behalf of themselves and a putative class consisting of all persons or entities who currently have ownership of any real waterfront property on Lake Wateree. Defendants deny that a class is legally permissible or

appropriate. To the extent further response is required, Defendants deny all remaining allegations in Paragraph 121.

122. The allegations in Paragraph 122 state legal conclusions to which no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations in Paragraph 122 and therefore deny them.

123. Defendants deny the allegation in Paragraph 123.

124. Defendants deny the allegation in Paragraph 124.

125. Defendants deny the allegations in Paragraph 125 and all of its subparts.

126. Defendants deny the allegations in Paragraph 126.

127. Defendants deny the allegations in Paragraph 127.

128. Defendants deny the allegations in Paragraph 128.

129. Defendants deny the allegations in Paragraph 129.

130. Defendants deny the allegations in Paragraph 130.

131. Defendants deny the allegations in Paragraph 131.

132. Defendants deny the allegations in Paragraph 132.

COUNT I:
NEGLIGENCE/GROSS NEGLIGENCE

133. Defendants restate and incorporate their responses to the preceding paragraphs as if fully set forth herein.

134. Defendants deny the allegations in Paragraph 134.

135. The allegations of Paragraph 135 of the First Amended Complaint refer to certain documents for the relicensing of the Catawba-Wateree Hydroelectric Project. Plaintiffs are

referred to those documents, and Defendants deny any allegations inconsistent with their terms. Defendants deny all remaining allegations in Paragraph 135.

136. Defendants deny the allegations in Paragraph 136.

137. Defendants deny the allegations in Paragraph 137.

138. Defendants deny the allegations in Paragraph 138.

139. Defendants deny the allegations in Paragraph 139.

140. Defendants deny the allegations in Paragraph 140.

141. Defendants deny the allegations in Paragraph 141.

142. Defendants deny the allegations in Paragraph 142.

143. Defendants deny the allegations in Paragraph 143.

144. Defendants deny the allegations in Paragraph 144.

145. Defendants deny the allegations in Paragraph 145.

146. Defendants deny the allegations in Paragraph 146.

147. Defendants deny the allegations in Paragraph 147.

148. Defendants deny the allegations in Paragraph 148.

149. Defendants deny the allegations in Paragraph 149 and all of its subparts.

150. Defendants deny the allegations in Paragraph 150.

151. Defendants deny the allegations in Paragraph 151.

152. Defendants deny the allegations in Paragraph 152.

153. Defendants deny the allegations in Paragraph 153.

COUNT II:
STRICT LIABILITY FOR ULTRAHAZARDOUS ACTIVITY

154. Defendants restate and incorporate their responses to the preceding paragraphs as if fully set forth herein.

155. Defendants deny the allegations in Paragraph 155.

156. Defendants deny the allegations in Paragraph 156.

157. The allegations in Paragraph 157 state legal conclusions to which no response is required. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations in Paragraph 157 and therefore deny them.

158. Defendants deny the allegations in Paragraph 158.

159. Defendants deny the allegations in Paragraph 159.

160. The allegations in Paragraph 160 refer to various licenses, approvals or permits issued by governmental agencies. Plaintiffs are referred to said documents, and Defendants deny any allegations inconsistent with them. Defendants deny all remaining allegations in Paragraph 160.

161. Defendants deny the allegations in Paragraph 161.

162. Defendants deny the allegations in Paragraph 162.

COUNT III:
TRESPASS

163. Defendants restate and incorporate their responses to the preceding paragraphs as if fully set forth herein.

164. Defendants deny the allegations in Paragraph 164.

165. Defendants deny the allegations in Paragraph 165.

166. Defendants deny the allegations in Paragraph 166.

167. Defendants lack sufficient information to admit the truth of the allegations in Paragraph 167 and therefore deny them.

168. Defendants deny the allegations in Paragraph 168.

169. Defendants deny the allegations in Paragraph 169. Specifically, Defendants deny that they have interfered with any rights of Plaintiffs or class members.

170. Defendants deny the allegations in Paragraph 170.

171. Defendants deny the allegations in Paragraph 171.

172. Defendants deny the allegations in Paragraph 172.

173. Defendants deny the allegations in Paragraph 173.

174. Defendants deny the allegations in Paragraph 174.

175. Defendants deny the allegations in Paragraph 175.

COUNT IV:
NUISANCE

176. Defendants restate and incorporate their responses to the preceding paragraphs as if fully set forth herein.

177. Defendants deny the allegations in Paragraph 177.

178. Defendants deny the allegations in Paragraph 178.

179. Defendants deny the allegations in Paragraph 179.

180. The allegations in Paragraph 180 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 180.

181. Defendants deny the allegations in Paragraph 181.

182. Defendants deny the allegations in Paragraph 182.

183. Defendants deny the allegations in Paragraph 183.

184. Defendants deny the allegations in Paragraph 184.

COUNT V:
UNJUST ENRICHMENT

185. Defendants restate and incorporate their responses to the preceding paragraphs as if fully set forth herein.

186. Pursuant to its August 6, 2025 order [ECF No. 55], the Court dismissed Count V of the FAC. Accordingly, the allegations in Paragraph 187 do not require a response from Defendants. To the extent any response is required, the allegations are denied.

187. Pursuant to its August 6, 2025 order [ECF No. 55], the Court dismissed Count V of the FAC. Accordingly, the allegations in Paragraph 187 do not require a response from Defendants. To the extent any response is required, the allegations are denied.

188. Pursuant to its August 6, 2025 order [ECF No. 55], the Court dismissed Count V of the FAC. Accordingly, the allegations in Paragraph 188 do not require a response from Defendants. To the extent any response is required, the allegations are denied.

189. Pursuant to its August 6, 2025 order [ECF No. 55], the Court dismissed Count V of the FAC. Accordingly, the allegations in Paragraph 189 do not require a response from Defendants. To the extent any response is required, the allegations are denied.

190. Pursuant to its August 6, 2025 order [ECF No. 55], the Court dismissed Count V of the FAC. Accordingly, the allegations in Paragraph 190 do not require a response from Defendants. To the extent any response is required, the allegations are denied.

191. Pursuant to its August 6, 2025 order [ECF No. 55], the Court dismissed Count V of the FAC. Accordingly, the allegations in Paragraph 191 do not require a response from Defendants. To the extent any response is required, the allegations are denied.

AFFIRMATIVE AND OTHER DEFENSES

Defendants assert the following affirmative and other defenses to the FAC, but do not assume the burden of proof on any such defense except as required by applicable law with respect to the particular defense asserted.

FIRST DEFENSE

The FAC, and each Count therein, fails to state a claim upon which relief can be granted against Defendants and should be dismissed.

SECOND DEFENSE

Defendant Duke Energy Corporation is not a proper party to the FAC.

THIRD DEFENSE

Plaintiff and putative class members lack standing with respect to one or more claims asserted in the FAC and one or more forms of relief sought.

FOURTH DEFENSE

Plaintiff's and putative class members' claims against Defendants are barred, in whole or in part, by the applicable statute of limitations.

FIFTH DEFENSE

Plaintiffs' and putative class members' claims against Defendants are barred by the doctrines of waiver, estoppel, laches, and/or unclean hands.

SIXTH DEFENSE

Defendants did not owe Plaintiffs or any putative class member any duty of care.

SEVENTH DEFENSE

Defendants complied with the state of the art during all relevant time periods.

EIGHTH DEFENSE

Plaintiff's and putative class members' alleged injuries and damages, if any, were not caused by Defendants.

NINTH DEFENSE

There can be no recovery against Defendants because Plaintiff's and putative class members' injuries, if any, were caused by the superseding and intervening negligence of third parties over whom Defendants had no right of control and for which Defendants have no liability.

TENTH DEFENSE

Plaintiffs' and putative class members' alleged injuries were not foreseeable.

ELEVENTH DEFENSE

Plaintiffs and putative class members have not been damaged in the manner or to the extent alleged in the FAC.

TWELFTH DEFENSE

Some or all of the damages sought in the FAC constitute impermissible double recovery for the alleged injuries.

THIRTEENTH DEFENSE

Plaintiff's and the putative class members' claim for punitive damages is subject to the limitations cap, and the legal protections, contained in S.C. Code §15-32-530.

FOURTEENTH DEFENSE

Plaintiff's and the putative class members' claim for punitive damages is barred by the South Carolina and/or United States Constitution.

FIFTEENTH DEFENSE

Plaintiffs' and the putative class members' claims are barred, in whole or in part, by their failure to mitigate damages.

SIXTEENTH DEFENSE

This action is not appropriate for class certification and Plaintiffs and putative class members cannot establish the essential requirements for class certification consistent with Federal Rule of Civil Procedure 23 and the applicable case law.

The above affirmative and other defenses are based on the facts and information currently known to Defendants. Defendants reserve the right to amend or add defenses or affirmative defenses to which it may be entitled under the United States and South Carolina Constitutions or any federal, state or common law and/or which are based on facts later discovered, pleaded, or offered.

DEFENDANTS DEMAND A JURY TRIAL.

WHEREFORE, Defendants deny any and all liability to Plaintiffs and putative class members, and respectfully pray that the Court enter judgment in their favor, dismiss the FAC in its entirety, declare that this action may not be maintained as a class action under Rule 23, and award Defendants their costs and attorneys' fees incurred in defending this matter, and such other and further relief as the Court deems just and proper.

Dated: August 20, 2025.

s/Kevin A. Dunlap
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