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Suit Says Santee Cooper Charging for Plant it Didn't Build.

A local attorney is pursuing a class action lawsuit against Santee Cooper over the purchase of a power plant it never put into use and for charging “illegal rates.”

According to the lawsuit, Santee Cooper’s customers are on the hook for over \$800 million in bonds for a plant that was never built.

In an action filed this week, Conway attorney George Hearn is asking the court to certify his lawsuit as a class action against the state utility on behalf of all current or former residential and commercial Santee Cooper customers who paid increased rates from November 2009 to the present.

The suit alleges that the utility issued \$342 million in tax-exempt municipal bonds to finance, in part, the construction of two coal-fired power plants that would make up the Pee Dee Energy Campus in Florence County, with \$249 million of that going towards the purchase of a disassembled coal power plant “kit” from China.

The Chinese power plant was never built and is lying in a field unassembled in Florence County.

Hearn’s suit contends that Santee Cooper made the purchase of the Chinese power plant even though it had not received or begun the process of applying for most of the federal and state permits necessary to build or operate it.

In fact, the suit says that the federal and state regulations were such that Santee Cooper could not possibly obtain all the necessary permits to construct or operate that particular plant.

Santee Cooper did, however, receive an air quality construction permit from the South Carolina Department of Health and Environment Control in December of 2008 for the Pee Dee plant.

The lawsuit says that in 2008, Santee Cooper issued an additional \$406 million in tax-exempt municipal bonds to finance, in part, the construction of the Chinese power plant.

By May of 2009, the suit says Santee Cooper had issued approximately \$842 million in bonds to finance the Chinese power plant in on the Pee Dee Energy Campus, with its customers paying for it.

But in August of 2009, Santee Cooper’s Board of Directors made the decision to “suspend efforts to permit” the Chinese power plant.

In a press release dated Aug. 24, 2009, Santee Cooper’s chairman gave the utility’s reasons for not going through with the construction of the plant.

“We are witnessing three significant changes,” the state-owned utility’s chairman O.L. Thompson said. “The current recession has reduced overall demand for electricity, proposed federal government regulations would significantly increase the operating costs of coal-fired power plants and Central Electric Power Cooperative, our largest customer, intends to gradually reduce its power load from Santee Cooper by approximately 1,000 megawatts beginning in 2013.”

Thompson added that with the cancellation of the project “customers could benefit from the decision, because they may not need to bear the capital costs of constructing the proposed Pee Dee facility.”

The suit says the board of directors finally cancelled the plans to construct the plant in April of 2010 “even though Santee Cooper had already purchased the Chinese power plant that was delivered to South Carolina, purchased other assets, and incurred costs in an amount exceeding \$250 million.”

Hearn says the unassembled power plant was reclassified as prepaid expenses and as an asset in Santee Cooper’s consolidated balance sheet without taking any account of depreciation or decrease in value.

The suit contends that this action artificially inflated the financial condition of Santee Cooper and the utility said it was sure the assets were marketable and could be sold.

Today, according to the suit, Santee Cooper “continues to spend approximately \$13 million per year for maintenance and security on the unassembled plant including \$3.5 million spent annually to keep the plant in working condition.”

Hearn says the company had the opportunity to sell the unused Pee Dee plant for a lower amount than the purchase price but did not do so.

The suit says the utility imposed rate increases on its customers to repay bond indebtedness which was incurred for the purpose of acquiring and assembling an “asset which Santee Cooper has no intention or hopes of operating and did not roll back those rates once the project was cancelled.

Questionable rate hikes?

In August of 2009, Santee Cooper issued a press release stating its board of directors voted to consider a two-year rate increase that would be an overall raise for customers an average of 4.4 percent beginning in November 2009 and an additional 5.5 percent in November 2010.

According to the lawsuit, the board rejected that 2009 rate hike proposal. But in November of 2009, the residential rate was increased from 6.32 cents per kilowatt- hour to 8.88 cents per KWH and added an additional 1.0 cent per KWH for summer months.

This rate was not authorized by Santee Cooper nor by statute and was in excess of the original proposal that was being considered, according to the suit.

The lawsuit says in September of 2012, Santee Cooper issued a release that the Board of Directors approved a two-year hike totaling a 7 percent increase but began charging a 10 percent hike instead that was not presented or discussed at public hearings as required by law.

The suit says the plaintiffs are entitled to the recovery of all money paid to the defendant as a result of the illegal rate increases.

Hearn is asking the court to certify the matter as a class action on behalf of all of Santee Cooper’s customers and to grant damages and attorney fees.

Santee Cooper spokesperson Mollie Gore said the suit has just been filed and the utility is currently studying it.

“I can tell you this. Santee Cooper will vigorously defend itself against the suit,” Gore said.

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