

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

EDGAR "ED" WALKER, PHILIP
CALTABIANO, GRANT MEADE and
SAMER KHASHAN, Individually and on
Behalf of Others Similarly Situated

Plaintiffs,

vs.

OGLETHORPE POWER
CORPORATION
(aka OGLETHORPE ELECTRIC
MEMBERSHIP CORPORATION);
GEORGIA TRANSMISSION
CORPORATION;
and
WALTON ELECTRIC MEMBERSHIP
CORPORATION, JACKSON ELECTRIC
MEMBERSHIP CORPORATION,
and SAWNEE ELECTRIC
MEMBERSHIP CORPORATION, on
Behalf of Themselves and other Georgia
Electric Membership Cooperatives
Similarly Situated

Defendants.

Civil Action File No.

14CV2932-8

***COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES***

JURY DEMANDED

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND DAMAGES**

COME NOW the Plaintiffs on behalf of themselves and all others similarly
situated and hereby file this Class Action Complaint and Demand for Jury Trial, naming

Walker, et al., v Oglethorpe Power Corp, et al.
Superior Court, DeKalb County
Complaint for Declaratory and Injunctive Relief and Damages

as Defendants Oglethorpe Power Corporation ("Oglethorpe"), Georgia Transmission Corporation ("GTC"), and Walton, Jackson, and Sawnee Electric Membership Corporations, individually and as representatives of a class of the 38 retail distribution cooperatives that are members of Oglethorpe and GTC. In support, Plaintiffs state the following:

I. PRELIMINARY STATEMENT

1.

This case concerns some \$2 billion of patronage capital owned by the members and former members of 38 of Georgia's retail electric distribution cooperatives. On information and belief, approximately \$600 million of this patronage capital is held by former members of the cooperatives (including Plaintiffs), who are locked into their patronage capital ownership, frozen out from any return on their money and given no vote in the affairs of their cooperatives. Fully half, or approximately \$1 billion of this patronage capital, is locked up in Oglethorpe and GTC, wholesale power cooperatives that improperly fail to retire their patronage capital for the benefit of the millions of Georgia citizens who are or were their beneficial owners.

2.

Georgia law, federal tax law and cooperative economic principles mandate that electric cooperatives operate as nonprofits; that they collect rates from current customers

that are high enough to service their patronage capital obligations; and that they annually establish and maintain reasonable reserves of cash sufficient to fund patronage capital retirements at the close of each year. These obligations not only ensure that the cooperative operates on a nonprofit basis, but also fulfills the cooperative principle of user-ownership, in which only those people using the cooperative's services own it and fund it, without being subsidized by the capital contributions made by former customers. These laws and cooperative economic principles apply to all electric cooperatives — those that sell electricity directly to retail customers and those that sell the wholesale power and transmission services that are resold to those retail customers. Electric cooperatives enjoy complete freedom from rate regulation and substantial tax benefits in exchange for agreeing to satisfy these obligations.

3.

A necessary consequence of the mandate that current customers pay their own way is that current electric rates must be sufficient to pay for the cost of retiring the capital furnished by former members in earlier years. Neither state law nor cooperative principles allow current ratepayers to "free ride" on the capital investments of former members. To ensure that this does not occur, current cooperative members -- the people actually using the electricity -- must return the contributions of capital made by former members. Correct application of the user-ownership principle calls for former members

to receive a refund of their capital contributions when they terminate service (or by the next accounting cycle thereafter). Absent such prompt return of capital, a significant fraction of cooperative ownership remains with persons who are no longer members, violating not only the principles of nonprofit operation, operation at cost, and user-ownership, but also state law mandating that rates be sufficient at all times to service a cooperative's obligations, including its patronage capital obligations, and to establish and maintain cash reserves adequate for this purpose. Retaining capital for long periods of time also jeopardizes the tax-free status of a cooperative's earnings. Alternatively and at the very latest, capital should be returned to former members within the 13-year time-frame formerly used by Defendant Oglethorpe Power.

4.

For decades, Georgia's electric cooperatives have violated these obligations with impunity, giving current members the "free ride" that the law and cooperative principles were intended to prohibit. Motivated by a desire to curry favor with the current customer-members who elect their boards of directors, the cooperatives charge those current members excessively low rates that are insufficient to service patronage capital obligations and to establish and replenish the cash reserves required for the retirement of patronage capital. The entrenched institutional interest in re-election is matched by an equally-strong interest in retaining as much no-cost, interest-free equity capital as

possible — capital that can be used to build not just power lines, but corporate empires peopled with richly-compensated managers and directors who operate largely free from accountability.

5.

Because Georgia's electric cooperatives have been pursuing the self-interest of their boards and current customers for decades instead of following the law and cooperative principles, the contributions to patronage capital made by former members in years past are being retained for decades, if not indefinitely, subsidizing current members. These policies not only violate state law, federal tax law, and cooperative principles, but they deprive former cooperative members of the repayment to which they are entitled. The money at stake is substantial. Georgia's wholesale power supply and transmission cooperatives, Oglethorpe and GTC, have together retained patronage capital totaling almost \$1 billion, while the 38 retail distribution cooperatives that are the members of Oglethorpe and GTC are retaining another \$1 billion in patronage capital generated at the retail level, for total patronage capital of in excess of \$2 billion carried on the books of the retail distribution cooperatives in the names of their members and former members.

6.

While the electric cooperatives' refusal to follow Georgia law inflicts significant

financial harm on both former members and long-term current members, it is the former members like Plaintiffs who suffer the most egregious injustice. Unlike long-term current members, they no longer have a right to vote and exercise a voice in the way their cooperatives are governed. Instead, they are locked into capital accounts that pay no interest or return on their money and benefits only current members through rates that do not account for costs of capital. On information and belief, more than half of all patronage capital accounts held in the 38 retail distribution cooperatives are held by former members. Under the cooperative principle “one man, one vote” these former members would actually control the defendant cooperatives if they were permitted to vote and would undoubtedly vote to return their capital, which comprises at least 30% of the total patronage capital by dollar amount. Two billion dollars or more of patronage capital at the wholesale and retail level is held by the 38 retail distribution cooperatives on behalf of their current and former members. At least \$600 million of that belongs to former members of the retail cooperatives who cannot vote to return their money.

7.

Because the cooperative boards' self-interest in re-election will consistently result in the sacrifice of the rights of former members to the interest of current ones, Plaintiffs, who are former members of Georgia's cooperatives, seek this Court's assistance in correcting these serious injustices. They seek declaratory and injunctive relief, as well as

equitable remedies or, alternatively, damages at law for the cooperatives' decades-long refusal to comply with Georgia law and cooperative principles. This irreconcilable conflict between the legally and equitably protected interests of former members and those of all current members cries out for judicial resolution.

II. JURISDICTION AND VENUE

8.

This court has jurisdiction over all Defendants because they are all Georgia electric cooperatives, organized under the Georgia Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq., and maintaining their principal places of business in this state. Venue is proper against Oglethorpe and GTC because they maintain their principal offices and registered agents in this county. O.C.G.A. §46-3-243(b)(1).

9.

Venue is proper against Walton Electric Membership Corporation ("Walton EMC"), Sawnee Electric Membership Corporation ("Sawnee EMC") and Jackson Electric Membership Corporation ("Jackson EMC") because they are joint obligors and joint tortfeasors, in concert with Oglethorpe and GTC, which have their principal offices and registered agents in this county. Georgia Const., Art. VI, §2, ¶4. Venue is also proper against Walton EMC, Jackson EMC and Sawnee EMC because Plaintiffs seek substantial equitable relief against all defendants, including Oglethorpe Power Corporation and

Georgia Transmission Corporation, which maintain their principal offices and registered agents in this county. Art. VI, §2, ¶3.

III. PARTIES

10.

Plaintiff Edgar “Ed” Walker is a resident of the state of Georgia and a former member of Defendant Walton EMC. During some or all of the years from the 1980s through about 2005, Walker purchased retail electric service from Walton EMC and was allocated patronage capital generated from: 1) the excess earnings (“net margins”) of Walton EMC and; 2) the excess earnings/net margins of Oglethorpe, patronage capital allocations he still owns. Walker withdrew from membership in the cooperative when his electric service was discontinued after he moved out of Walton EMC's service area. He proceeds individually, and as representative of a class of similarly-situated former members of the retail distribution cooperatives served by Oglethorpe and GTC.

11.

Plaintiff Philip Caltabiano is a resident of the state of Georgia and a former member of Cobb Electric Membership Corporation (“Cobb EMC”). From approximately 1976 to 1988 Caltabiano purchased retail electric service from Cobb EMC and was allocated patronage capital generated from: 1) the excess earnings (“net margins”) of Cobb EMC and; 2) the excess earnings/net margins of Oglethorpe and GTC, patronage

capital allocations he still owns. Caltabiano withdrew from membership in the cooperative when his electric service was discontinued after he moved out of Cobb EMC's service area. Prior to his involvement in this action, Caltabiano was a Plaintiff and Class Representative for former members of Cobb EMC in the matter *In re Cobb EMC Class Action*, Superior Court of Cobb County, Georgia, Civil Action File No. 10:100353-48, a class action in which a settlement was approved on February 25, 2014. That settlement obligates Cobb EMC, among other things, to pay to its former retail members all patronage capital allocated by Oglethorpe and GTC to Cobb EMC if and when Oglethorpe and GTC retire that patronage capital to Cobb EMC. To obtain this relief for the benefit of not only the earlier Cobb EMC class, but also for the benefit of the former members of all 38 retail distribution cooperatives served by Oglethorpe and GTC, Caltabiano proceeds individually, and as representative of a class of similarly-situated former members of all the retail distribution cooperatives served by Oglethorpe and GTC.

12.

Plaintiff Grant Meade is a resident of the state of Georgia and is a former member of Sawnee EMC. During the late 1980s through 1991, Meade purchased retail electric service from Sawnee EMC and was allocated patronage capital generated from: 1) the excess earnings/net margins of Sawnee EMC and; 2) the excess earnings/net margins of

Oglethorpe. Meade withdrew from membership in the cooperative when his electric service was discontinued after he moved out of Sawnee EMC's service area. He proceeds individually, and as representative of a class of similarly-situated former members of the retail distribution cooperatives served by Oglethorpe and GTC.

13.

Plaintiff Samer Khashan is a resident of the state of Georgia and a former member of Defendant Jackson EMC. During some or all of the years 1993-2003, Khashan purchased retail electric service from Jackson EMC and was allocated patronage capital generated from: 1) the excess earnings/net margins of Jackson EMC and; 2) the excess earnings/net margins of Oglethorpe, patronage capital allocations he still owns. Khashan withdrew from membership in the cooperative when his electric service was discontinued after he moved out of Jackson EMC's service area. He proceeds individually, and as representative of a class of similarly-situated former members of the retail distribution cooperatives served by Oglethorpe and GTC.

14.

Defendant Oglethorpe Power Corporation (f/k/a Oglethorpe Electric Membership Corporation, hereinafter "Oglethorpe"), is a Georgia wholesale power supply cooperative organized in 1974 under Georgia's Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq. Oglethorpe is owned by Cobb EMC, Walton EMC, Sawnee

EMC, Jackson EMC and 34 other retail distribution cooperative members (“retail distribution cooperatives”) which are also its customers. Oglethorpe is the largest electric cooperative in the United States in terms of assets, kilowatt hours sold, and, through its retail distribution cooperative members, customers served, and is the second-largest owner supplier in the state of Georgia. Oglethorpe’s headquarters and registered agent Charles W. Whitney are located at 2100 East Exchange Place, Tucker, DeKalb County, Georgia, where the Defendant can be served with process.

15.

Georgia Transmission Corporation (“GTC”) is a Georgia wholesale power transmission cooperative incorporated in 1996 and organized under Georgia’s Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq. GTC is owned by its members, Oglethorpe and Oglethorpe’s 38 retail distribution cooperatives, including Cobb EMC, Walton EMC, Jackson EMC, and Sawnee EMC. GTC’s headquarters and its registered agent Anne H. Hicks are located at 2100 East Exchange Place, Tucker, DeKalb County, Georgia, where the Defendant can be served with process.

16.

Walton Electric Membership Corporation (“Walton EMC”) is a Georgia retail distribution cooperative organized under Georgia’s Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq. Walton EMC maintains its principal offices and

registered agent in Walton County, Georgia, and is sued both individually, and as the representative of a defendant class comprised of the 38 retail distribution cooperatives that are the members of Oglethorpe and GTC, as they purchase and receive power supply and transmission services from them. These retail distribution cooperatives such as Walton EMC are, in turn, owned by their own retail electric member/customers, including Plaintiff Walker.

17.

Sawnee Electric Membership Corporation (“Sawnee EMC”) is a Georgia retail distribution cooperative organized under Georgia’s Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq. Sawnee maintains its principal offices and registered agent in Forsyth County, Georgia, and is sued both individually, and as the representative of a defendant class comprised of the 38 retail distribution cooperatives that are the members of Oglethorpe and GTC, and that receive power supply and transmission services from them. These retail distribution cooperatives such as Sawnee EMC are, in turn, owned by their own retail electric member/customers, including Plaintiff Meade.

18.

Jackson Electric Membership Corporation (“Jackson EMC”) is a Georgia retail distribution cooperative organized under Georgia’s Electric Membership Corporation Act, O.C.G.A. §46-3-170 et seq. Jackson maintains its principal offices and registered

agent in Jackson County, Georgia, and is sued both individually, and as the representative of a defendant class comprised of the 38 retail distribution cooperatives that are the members of Oglethorpe and GTC, as they purchase and receive power supply and transmission services from them. These retail distribution cooperatives such as Jackson EMC are, in turn, owned by their own retail electric member/customers, including Plaintiff Khashan.

IV. FACTUAL ALLEGATIONS

19.

Electric cooperatives came into widespread use in the 1930s, as the Roosevelt administration sought to spread the benefits of electricity enjoyed by 90% of city dwellers to rural America, which remained largely without power. Created in 1936, the U.S. Rural Electrification Administration (“REA”) attempted to encourage the electrification of rural America by extending low-interest loans and technical support to electric cooperatives. Federal officials hoped that these cooperatives, which were member-owned nonprofits operated for the benefit of their members, would be able to extend utility service into sparsely-populated areas. The cooperative model was perceived as inherently fair due to its embrace of the principles of user-ownership, user-benefit, user-control, and limited returns.

20.

In 1937, the REA drafted a model state law – the Electric Cooperative Corporation Act – to facilitate the formation of these electric cooperatives, and by 2008, 75% of the land area in the United States was served by an electric cooperative. In 1937, the Georgia Assembly enacted a statute known as the Electric Membership Corporation Act that was roughly based upon the REA model statute, and between 1936 and 1946 Georgia's 42 electric cooperatives were formed. They currently provide electricity to the vast majority of Georgia's land area and almost half of its population.

21.

Georgia's electric cooperatives are organized in a three-tiered pyramid structure. At the top are cooperatives like Defendants Oglethorpe and GTC which generate and transmit wholesale electric power across the state's grid. In the middle are the Defendant retail distribution cooperatives which are the members of the generation and transmission cooperatives. These retail distribution cooperatives purchase power and transmission services from Oglethorpe and GTC for resale to their customer/members, specifically the millions of retail customers in their service territories. Thirty-eight of Georgia's 42 retail distribution cooperatives are members of Oglethorpe and GTC. At the bottom of the pyramid are millions of Georgia's citizens who, as current and former members of the

retail distribution cooperatives, own their respective distribution cooperatives, and beneficially own both Oglethorpe and GTC.

22.

As Oglethorpe represents in its Securities and Exchange Commission (“SEC”) filings, all cooperatives pledge to operate on similar business principles and legal foundations. All Defendants' bylaws and public communications state that they are organized and managed according to cooperative principles, which means that they are supposed to be operated on a not-for-profit basis, that their capital is supposed to be furnished by the persons actually using the cooperative's services in proportion to such use, that service is supposed to be provided at cost, and that members are supposed to vote on the affairs of the cooperative in accordance with the democratic principle of “one man, one vote.”

23.

In contrast to investor-owned utilities, electric cooperatives are supposed to be owned solely by their members, not stockholders, members who contribute capital and to whom the cooperative returns excess earnings according to the amount of electricity purchased, not the number of shares owned. Those members exercise democratic control over the cooperative by electing its leadership. Member ownership, democratic control, and the nonprofit mandate are intended to replace the rate regulation imposed on

investor-owned utilities; Georgia's electric cooperatives are not regulated in the rates they charge by the Georgia Public Service Commission.

24.

When an electric cooperative generates earnings in excess of what is required to pay for "operating costs and expenses" (excess earnings known as "net margins") the cooperative does not have unlimited discretion to use those earnings for any purpose it chooses. Instead, federal tax law and standard bylaw provisions require that the net margins must be returned to the members. This return of capital can occur annually, in the form of cash, but occurs most typically as an annual allocation to the members on the cooperative's books.

25.

In the latter case, those annual book allocations of earnings/net margins—referred to as "patronage capital" or "capital credits"—are credited to the individual account of each member according to the amount of electricity purchased. Each member receives a separate patronage capital credit allocation for each membership year in which the cooperative accumulates net margins, and his patronage capital account remains in force until redeemed in full by the cooperative, even if a patronage capital account holder ceases to be a cooperative member. These patronage capital allocations are the cooperative's equity but until they are redeemed by payment, these patronage capital

allocations are owned by the members individually and collectively, not by the cooperative corporation which serves merely as their agent or trustee. The retail distribution cooperative Defendants have all allocated patronage capital to the Plaintiffs.

26.

When power generation and transmission cooperatives like Defendants Oglethorpe and GTC generate excess earnings/net margins, they make annual patronage capital allocations on their books to the accounts of their members, which are the Defendant retail distribution cooperatives. As of December 31, 2012, Oglethorpe had \$673,009,000 and GTC had \$223,741,000 in accumulated patronage capital allocated to members on their books.

27.

After being credited with an annual patronage capital allocation on the books of Oglethorpe and/or GTC, the Defendant retail distribution cooperatives in turn re-allocate that patronage capital to the individual accounts of their own customer-members, including Plaintiffs in years they had service. This is so in part because the net margins of Oglethorpe and GTC flow through to the profit and loss statements of their members, who add them to their own locally generated net margins before allocating the resulting total net margins to their retail members.

28.

As an example, the bylaws and policies of Defendant Sawnee EMC describe how patronage capital allocated to Sawnee by “Affiliated Organizations” like Oglethorpe and GTC are to be allocated to Sawnee’s own members. Board Policy 305, enacted under the authority of Section 9.02 of its bylaws, expressly states that:

[T]he portion of credits [allocated to Sawnee by Oglethorpe/GTC] which in turn will be allocated to and vested in each of the Cooperative's own patrons as Capital Credits shall be ascertained pursuant to the same method employed for allocating the Cooperative's Operating and Non-Operating Margins....The Cooperative shall maintain its Capital Credit records and books in such a manner as to separately reflect Capital Credits allocated to each patron as a pass-through of Capital Credits from Affiliated Organization(s).

Sawnee Electric Membership Corporation, Policy No. 305, Capital Credits Received From Affiliated Organizations, ¶II(3)(a), (b).

29.

Patronage capital allocations never become the property of Oglethorpe, GTC or the retail distribution cooperatives. Because the retail distribution cooperatives' retail customer-members (and former members) are the sole source of the funds that generate net margins, they are not only the owners of the patronage capital generated from the margins of the retail distribution cooperatives and allocated to them on their books, but they are also the assignees and beneficial owners of the patronage capital of Oglethorpe

and GTC which their respective retail distribution cooperatives reallocated to them on their books.

30.

Retained patronage capital allocations represent capital furnished by the member for the cooperative's use on his behalf, and are the member's property until returned. Unlike the retained earnings of a for-profit corporation, patronage capital at both the generation and transmission cooperative level and the retail distribution cooperative level is temporary equity furnished by the members that must be returned to its owners. It is this obligation upon termination of service that justifies the tax-exempt treatment accorded to the patronage capital allocations of even those cooperatives (like Oglethorpe) otherwise subject to federal income taxation. This obligation to return excess earnings is also necessary to ensure that: 1) the cooperative provides service at cost; 2) the cooperative operates so that its equity is owned by current customers consistent with the cooperative principle of user-ownership; and 3) the cooperative operates so that each user funds its operations in proportion to his use of the cooperative's electric service consistent with the cooperative principle of proportionality in capital ownership.

31.

Patronage capital allocations represent specific, identifiable funds earmarked for eventual payment or redemption to each retail distribution cooperative member

(including former members like Plaintiffs) according to that member's specific allocation. Retail distribution cooperative former members like Plaintiffs own their patronage capital accounts until the accounts have been fully redeemed through payment, even after they cease to be members of the cooperative. A cooperative cannot terminate members' rights and interests in their patronage capital accounts without suffering serious tax consequences and loss of the organization's status as a cooperative.

32.

The retail distribution cooperatives are required to provide annual notification to members of the allocation of their patronage capital from affiliated organizations like Oglethorpe and GTC in the same manner that they notify those members about direct patronage capital allocations made by the retail distribution cooperative itself. The cooperative must keep records allowing it to provide annual notice to former members of the balance in their patronage capital accounts. Such records also allow the cooperative to locate former members in the event of a retirement of patronage capital.

33.

Redemption of patronage capital is necessary to give meaning to the cooperative's obligation to operate on a non-profit cooperative basis, an obligation imposed by Georgia statute and the Defendants' bylaws. Redemption of patronage capital upon termination of service (or by the next accounting period thereafter) or, alternatively and at the latest, on

a regular, fixed schedule like the 13-year plan initially adopted by Oglethorpe, also ensures that the capital of the cooperative is owned entirely or primarily by current members in proportion to their use of the cooperative, a fundamental principle of cooperative operation.

34.

While correct application of cooperative principles and state and federal tax law calls for the immediate refund of patronage capital when service is terminated, a cooperative using a fixed schedule should implement a revolving plan schedule, as recommended by the REA (now Rural Utilities Service, or RUS). Most cooperatives that adopt a fixed schedule for returning patronage capital use a "first in, first-out" ("FIFO") system. A cooperative that used a FIFO scheme on a 13--year revolving fund cycle would redeem 2001 patronage capital allocations for cash in 2014.

35.

A cooperative accumulates excess revenue to allocate as patronage capital and ultimately redeem to its members through its rate structure. Section §46-3-340(a) of the Georgia Electric Membership Corporation Act mandates that a cooperative's current rates be "sufficient *at all times*" to cover operating expenses, costs of servicing its "obligations" and costs of establishing and maintaining "reasonable reserves." Because the cooperative has an "obligation" to retire patronage capital allocations of former

members, the rates of current members must be sufficient “at all times” to permit such retirement to occur. Furthermore, the rates of current customers must also be high enough to establish and maintain reasonable cash reserves during the course of each year such that the cooperative will have the cash on hand required to fund patronage capital retirements at the close of each year.

36.

Because of the cooperative nature of electric cooperatives and the bylaws under which they are generally operated, every dollar of payment by a member in excess of the *cost* of providing electric service constitutes capital furnished to the cooperative by that patron. This patronage capital is an amount which the cooperative must then allocate to each member and which the member is entitled to recover. Thus, even if the member's funds are invested in a hard asset like a power plant, contributions to that asset are accounted for as allocated patronage capital and must eventually be returned to ensure that current members always bear their share of the costs of those assets. In the case of a non-exempt cooperative like Oglethorpe, the obligation to return excess earnings above “operating costs and expenses,” a phrase derived from tax law and employed in the bylaws of all Defendants, is the justification for excluding these excess earnings from taxable income. The failure to return past years’ patronage capital allocations violates

cooperative principles and is an indication that the cooperative's rates are too low to comply with §46-3-340 (a).

37.

Current rates must be sufficient to fund operating costs, the service of "obligations" such as patronage capital retirements, and the maintenance of reasonable cash reserves for this and other purposes. All rate revenues received in excess of "operating costs and expenses"--what a commercial corporation would classify as "profit"--are classified as "net margin" by cooperatives and are required by electric cooperative bylaws and tax law to be allocated to the members. Net margins are accounted for on the cooperative's books by dividing the net margins among the cooperative's rate-paying members, and allocating a patronage capital share to each of them based on the amount of business the member transacts with the cooperative.

38.

Net margins at the wholesale power generation and transmission level generate similar margins and provide allocations of patronage capital to the 38 retail distribution cooperatives which use their members' monthly retail electric rate payments to purchase power and transmission services from Oglethorpe and GTC.

39.

When retail distribution cooperatives generate net margins, they allocate them directly to their members. When Defendants Oglethorpe and GTC generate net margins they allocate them to the specific patronage capital accounts of their retail distribution cooperative members (including Walton, Jackson, and Sawnee EMCs), according to the fixed percentage capacity cost responsibility assigned to each retail distribution cooperative in the Wholesale Power Contracts. The Defendant retail distribution cooperatives then divide the Oglethorpe/GTC patronage allocations amongst their own retail members and allocate that patronage capital to the specific, individualized patronage capital accounts of their own members.

40.

The retail distribution cooperatives are obligated to retire and pay to their members/customers the patronage capital allocated to the retail distribution cooperatives by Oglethorpe and/or GTC. This is because it was the retail members' rate payments that funded the wholesale power purchases and generated the net margins and accumulated patronage capital on the books of Oglethorpe and GTC. At the very latest, this obligation ripens when Oglethorpe/GTC makes a cash redemption of patronage capital to the retail distribution cooperatives. However, the retail distribution cooperatives should also be retiring these Oglethorpe/GTC capital credits that belong to their retail members,

especially their former members, independently from cash payments from Oglethorpe and GTC inasmuch as the obligation of patronage capital retirement ultimately rests at the retail distribution cooperatives' level. The retail distribution cooperatives control what Oglethorpe and GTC do insofar as setting their wholesale rates, establishing reserves for capital credit retirements and making actual distributions of cash to the retail distribution cooperatives. If the cooperatives at the retail distribution level choose not to provide for distributions of cash from Oglethorpe and GTC, then they must retire the capital credits they have allocated to their respective members, especially their former members, from their own sources of cash, including borrowings, cash reserves established for this purpose and their locally generated net margins used to establish and maintain those reserves.

41.

Though cooperatives often retain the funds associated with patronage capital allocations, and invest them in physical plant or other fixed assets, that patronage capital never becomes the property of the cooperative. That capital belongs to the individual members and must ultimately be returned to them. This return should occur when a member terminates service (or by the close of the next accounting period thereafter) or, alternatively and at the latest, within a reasonable period such as the 13-year cycle the

retail distribution cooperatives deemed appropriate and feasible when they initially organized Oglethorpe.

42.

This is true even when the patronage capital is allocated by the generation and transmission cooperative (Oglethorpe and GTC), not by the retail distribution cooperatives of which Plaintiffs were members. The net margins recognized by Oglethorpe and GTC were funded by retail rate payments made by Plaintiffs; the fact that the payments were passed through the retail distribution cooperative first before reaching Oglethorpe and GTC does not alter or diminish Plaintiffs' ownership interest in that patronage capital.

43.

Therefore, retail distribution cooperative members and former members like Plaintiffs are the beneficial owners and assignees of the equity that Oglethorpe and GTC retain and allocate on their books as patronage capital, not the retail distribution cooperatives themselves.

44.

The Defendant retail distribution cooperatives recognize that when Oglethorpe and GTC make patronage capital allocations to them, those allocations must be passed on to the members of the retail distribution cooperatives, who are its owners, as a direct pass-

through. The generation and transmission cooperatives are extensions of the retail distribution cooperatives that own them. The fact that the retail distribution cooperative members supply capital to Oglethorpe and GTC through the retail distribution cooperatives' purchases of wholesale power and services does not alter the fact that this capital is furnished by the individual members.

45.

If Defendants Oglethorpe and/or GTC were to redeem patronage capital credits by making payment to the Defendant retail distribution cooperatives, those retail distribution cooperatives would be obligated to pass those payments through to their customer/members and former members (including Plaintiffs) to whom the patronage capital credits being redeemed were previously allocated. According to the Defendants' bylaws, these specific, identifiable funds would be paid to each retail distribution cooperative member according to the allocation previously made to them on the retail distribution cooperatives' books. Once the boards of Oglethorpe or GTC agree to make payments in redemption of allocated patronage capital, the retail distribution cooperative members and former members who have unredeemed patronage capital accounts acquire a vested possessory interest in the redemption payments that follow.

46.

Upon information and belief, the retail distribution cooperatives have never redeemed and paid to their members any of their Oglethorpe/GTC allocations even though Oglethorpe and GTC have, since their formation, allocated patronage capital to their 38 retail distribution cooperative members on an annual basis and even though those retail distribution cooperatives have in turn allocated that patronage capital to their retail customer members. Upon information and belief, some but not all Defendant retail distribution cooperatives make annual redemptions of the patronage capital generated by their own retail sales net margins, but of those making distributions, all redeem capital contributions on lengthy revolving cycles in excess of the 13 years that they deemed reasonable when they organized Oglethorpe.

47.

The Defendant retail distribution cooperatives' bylaws purport to grant their boards of directors virtually unlimited discretion to refuse to redeem patronage capital so long as the decision can be justified as one required to ensure that the financial condition of the cooperative will not be "impaired." However, whether a cooperative's financial condition will be impaired is wholly within its own control as it is required by Georgia law to impose electricity rates on current customers that are sufficient to service retirements of patronage capital "obligations" and to establish and maintain reasonable cash reserves for

this purpose. If a cooperative's financial condition would be impaired by the retirement of patronage capital, it is so because the cooperative has, through its own fault, failed to budget for current member rates and net margins sufficient to service patronage capital obligations and establish reasonable cash reserves for that purpose, in violation of its legal and fiduciary duties.

48.

Defendant retail distribution cooperatives may contend that under these bylaws restrictions on retirements of patronage capital, they are not obligated to redeem the patronage capital passed through to their members from Oglethorpe/GTC because they have never received cash redemption payments from Oglethorpe or GTC. This is false. In 1997, Oglethorpe made a \$49 million redemption of patronage capital, representing the redemption of 14.572% of the patronage capital allocated to its members for the years 1979-1995. Though this patronage capital had been previously allocated by the retail distribution cooperatives to their own members (including Plaintiffs here), that \$49 million redemption payment was never distributed to those members, but was instead used to capitalize GTC. Moreover, the Defendant retail distribution cooperatives can easily budget to have the cash on hand required to make retirements of patronage capital allocated at the Oglethorpe/GTC level either through their own borrowings or through increased rates at the retail level as authorized and required by Georgia law.

49.

In 1990-1992, Oglethorpe paid the retail distribution cooperatives an unknown sum to redeem patronage capital allocated in the years 1976-78. Though these patronage capital allocations had already been passed through to retail distribution cooperative members (including Plaintiffs), the Defendant retail distribution cooperatives never distributed these payments to the rightful owners, the patronage capital account holders, including Plaintiffs here.

50.

Upon information and belief, the 1990-1992 and 1997 redemptions were made pursuant to Oglethorpe's bylaws, which until 1992 provided for a 13-year redemption schedule and permitted additional distributions in the discretion of the board. After 1993, Oglethorpe eliminated its established 13-year plan and amended its bylaws to provide a 30-year retirement schedule. In 1997, Oglethorpe's board--controlled by the Defendant retail distribution cooperatives--revoked the 30-year revolving schedule and no patronage capital redemptions have occurred since then. The retail distribution cooperatives, through their appointment of directors to the boards of Oglethorpe, acted in concert with, and conspired with Oglethorpe in setting these policies, and specifically in revoking Oglethorpe's patronage capital redemption plan.

51.

Upon information and belief, GTC has never adopted a fixed patronage capital redemption schedule. The Defendant retail distribution cooperatives also control GTC through their appointment of directors to the board of GTC. They acted in concert with, and conspired with Oglethorpe and GTC in setting a policy that "prevented" patronage capital redemptions.

52.

The Defendant retail distribution cooperatives obviously control their own policies with respect to patronage capital redemption. It is within the retail distribution cooperatives' control, and it is their statutory duty, to set rates sufficient to service their patronage capital "obligations" and to fund reasonable reserves of cash required for that purpose. They control the cooperative's finances, and have the power to budget for patronage capital distributions or redemptions, and to ensure that their financial condition is sufficiently sound to permit patronage capital redemption to occur in a manner consistent with the cooperatives' bylaws and Georgia law, particularly O.C.G.A. §46-3-340. Were current rates maintained at a level sufficient to service patronage capital obligations and to fund reasonable cash reserves required for this purpose pursuant to O.C.G.A. §46-3-340, the retail distribution cooperatives could redeem their members'

patronage capital upon termination of service (or by the close of the next accounting period thereafter) or, at the latest, on a fixed and timely 13-year revolving schedule.

53.

The Defendant retail distribution cooperatives also control Defendants Oglethorpe and GTC because they hold a voting majority on the boards of both cooperatives. Therefore, the patronage capital redemption policies implemented by Oglethorpe and GTC are the product of the distribution Defendants' own making. It is within their control to set the rates charged by Oglethorpe and GTC, to budget for patronage capital distributions or redemptions, and to ensure that the financial condition of Oglethorpe and GTC is sufficiently sound to permit patronage capital redemption to occur in a manner consistent with cooperative principles, the cooperatives' bylaws and Georgia law. Instead of ensuring that Oglethorpe and GTC set rates that comply with §46-3-340 (a), rates that allow for the return of a member's patronage capital after termination of service or, at the latest, on an annual revolving 13-year cycle, the Defendant retail distribution cooperatives collude with one another and with Oglethorpe and GTC to prevent patronage capital redemptions, sequestering net margins at the Oglethorpe and GTC levels. This collusion was concealed from Plaintiffs, who were unaware that it was occurring. Oglethorpe's and GTC's violation of §46-3-340 would not have been possible

without the collusion and conspiratorial conduct of the Defendant retail distribution cooperatives.

54.

Oglethorpe and GTC do not charge rates that are sufficient to service their patronage capital obligations or to fund and maintain reasonable cash reserves for the purpose of retiring patronage capital, and are in violation of §46-3-340 (a) and (b). Instead, Oglethorpe, GTC, and their member retail distribution cooperatives have conspired and acted in concert to set wholesale power and transmission rates at below-market levels for the benefit of current customers and to the detriment of former members like Plaintiffs. Oglethorpe, in particular, has adhered to this cut-rate structure even as it has embarked on the construction of two nuclear projects with a price tag of at least \$5 billion. In 2012, Oglethorpe was charging members a wholesale power rate of 5.77 cents per kilowatt hour (a rate *reduction* from 2011) while investor-owned utility Georgia Power (its partner in all nuclear generation facilities) was charging 9.6 cents per kilowatt hour for wholesale power supplied from some of the same facilities. A rate increase of less than 5% would allow Oglethorpe to return its patronage capital on a timely basis. Neither Oglethorpe nor GTC is charging rates sufficient to service patronage capital or to maintain reasonable cash reserves for this purpose. As a consequence of their illegal rate

structures, Oglethorpe has not returned patronage capital since 1997, and GTC has never returned patronage capital.

55.

The current rate structure adopted by Oglethorpe, GTC, and the retail distribution cooperatives subsidizes the rates of current members at the expense of former members through the free use of the capital of former members, which would not occur if rates were high enough to service patronage capital obligations and to establish and maintain the cash reserves required to redeem patronage capital allocations made in prior years.

56.

Like Oglethorpe and GTC, the retail distribution cooperatives themselves generate excess earnings that they book as patronage capital allocations to the accounts of their members. Some retail distribution cooperatives have made annual patronage capital retirement payments, though none have adopted a fixed schedule for doing so in their bylaws. However, their rates—like Oglethorpe's and GTC's—are too low to permit the return of patronage capital to members upon termination of their service (or by the close of the next accounting period thereafter). They are also too low to allow for the redemption of patronage capital obligations on a cycle of reasonable length (13 years), or to establish and maintain the cash reserves required to make annual patronage capital

retirements under such a plan. Both flaws result in either nonexistent patronage capital redemption programs, or redemption cycles that are unreasonably long.

57.

Further, the retail distribution cooperatives have failed to maintain adequate records of the whereabouts of their former members, and upon information and belief, none of them send annual statements to those former members detailing the amount of allocated capital credits by year and source, breaking down how much of the member's patronage capital allocation is attributable to excess earnings at the retail distribution cooperative level, and how much is attributable to patronage capital allocations passed through from Oglethorpe and GTC. If they did so, the retail distribution cooperatives would have current contact information for former members when distributions are made and those former members would be put on notice that they have account balances for which they should expect payment. The retail distribution cooperatives knowingly and intentionally fail to provide annual statements or to maintain current contact information for former members because they do not want those former members to expect or demand a return of their money.

58.

Unless a cooperative pays for the time value of the capital of former members that it uses, the cooperative violates cooperative and non-profit principles because it in fact

realizes a profit and is unjustly enriched by having free use of the former members' money. The interest-free use of former members' money allows all Defendants to operate at lower cost, benefitting current members at the expense of former members. This is a violation of cooperative principles and, as the National Rural Electric Cooperative Association has recognized, there are "good business reasons to retire capital credits....[it] is a way to ensure that each generation of members pays its own way by providing its own equity." 2005 NRECA Capital Credits Task Force Report at 10.

V. CLASS ACTION ALLEGATIONS

Plaintiff Class — Former Members of Georgia's Retail Distribution Cooperatives

59.

Pursuant to Georgia Code §9-11-23, Plaintiffs bring this action both individually and on behalf of all other members of the class described below. The Plaintiff Class consists of:

Former members of the 38 retail distribution cooperatives that are members of Oglethorpe Power Corporation and Georgia Transmission Company, if such former members continue to have unredeemed patronage capital accounts on the books of any of those retail distribution cooperatives. Former members who cease service with one cooperative but later establish service with a different cooperative are class members so long as they still have unredeemed patronage capital on the books of a cooperative in which they are a former member. The class is limited to those former members who remain residents of the State of Georgia. The Class excludes the Court, members of the immediate family of the Court, and the Defendants

and Defendant class members and their parents, subsidiaries, affiliates, officers, directors and employees.

60.

Plaintiff Walker is a former customer and member of Walton EMC. Walton EMC is a member of both Oglethorpe and GTC. Walker was a captive ratepayer, with no choice of electric service provider. Walker paid all charges due to Walton EMC, owns patronage capital in Walton EMC, and has been allocated patronage capital on the books of the cooperative, patronage capital that remains unredeemed due to Walton EMC's unreasonable patronage capital retirement policies. None of the patronage capital originally allocated by Oglethorpe and GTC to Walton EMC, and then allocated to Walker by Walton EMC as a pass-through, has ever been redeemed. Patronage capital originally generated by the excess earnings or net margins of Walton EMC itself also remains unredeemed.

61.

Plaintiff Caltabiano is a former customer and member of Cobb EMC. Cobb EMC is a member of both Oglethorpe and GTC. Caltabiano was a captive ratepayer with no choice of electric service provider. Caltabiano paid all charges due to Cobb EMC, owned patronage capital in Cobb EMC, and has been allocated patronage capital on the books of the cooperative. None of the patronage capital originally allocated by Oglethorpe and GTC to Cobb EMC, and then allocated to Caltabiano by Cobb EMC as a pass-through,

has ever been redeemed, but Cobb EMC has agreed to retire such patronage capital if and when received in cash from Oglethorpe and GTC.

62.

Plaintiff Meade is a former customer and member of Sawnee EMC. Sawnee EMC is a member of both Oglethorpe and GTC. Meade was a captive ratepayer, with no choice of electric service provider. Meade paid all charges due to Sawnee EMC, owns patronage capital in Sawnee EMC, and has been allocated patronage capital on the books of the cooperative, patronage capital that remains unredeemed due to Sawnee EMC's unreasonable patronage capital retirement policies. None of the patronage capital originally allocated by Oglethorpe and GTC to Sawnee EMC, and allocated to Meade by Sawnee EMC as a pass-through, has ever been redeemed.

63.

Plaintiff Khashan is a former customer and member of Jackson EMC. Jackson EMC is a member of both Oglethorpe and GTC. Khashan was a captive ratepayer, with no choice of electric service provider. Khashan paid all charges due to Jackson EMC, owns patronage capital in Jackson EMC, and has been allocated patronage capital on the books of the cooperative, patronage capital that remains unredeemed due to Jackson EMC's unreasonable patronage capital retirement policies reflected in Jackson EMC's bylaws. None of the patronage capital originally allocated by Oglethorpe and GTC to

Jackson EMC, and allocated to Khashan by Jackson EMC as a pass-through, has ever been redeemed. Patronage capital originally generated by the excess earnings or net margins of Jackson EMC itself also remains unredeemed.

64.

Walker, Caltabiano, Meade and Khashan are members of a class of former members of the 38 Georgia retail distribution cooperatives that are members of Oglethorpe and GTC. Those former members—numbering in the millions—are so numerous that their joinder in one lawsuit is impracticable. The claims of Walker, Caltabiano, Meade and Khashan are typical of those held by absent class members, so Walker, Caltabiano, Meade and Khashan will fairly and adequately represent absent Plaintiff class members.

65.

Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs and all Class members were harmed by the same wrongful conduct of Oglethorpe, GTC and the Defendant retail distribution cooperatives.

66.

The claims of Plaintiffs Walker, Caltabiano, Meade and Khashan are typical of those of absent class members, and they will adequately represent that class. There are numerous questions of law and fact common to this class, including whether Defendants

breached their contractual and equitable duty to operate according to cooperative principles, whether Defendants charge rates that comply with Georgia Code §46-3-340, whether Defendants unjustly enriched themselves by refusing to return Plaintiffs' patronage capital upon termination of service (or at the close of the next accounting period), or alternatively on a reasonable schedule of 13 years, and whether Defendants jointly conspired and colluded to commit these breaches of duty.

67.

Certification of a Plaintiff class is appropriate under Georgia Code of Civil Procedure §9-11-23(b)(1) and (2) because the prosecution of separate actions against the Defendants individually creates the risk of inconsistent and varying adjudications, because a final decision on the merits in one action may, as a practical matter, have an impact upon or be dispositive of interests of other members of the defendant class, and Defendants have acted in a manner on grounds generally applicable to the Plaintiff class, rendering injunctive and declaratory relief appropriate.

68.

Certification of a class under Georgia Code §9-11-23(b)(3) is also appropriate because there are numerous questions of law and fact common to the Class, which questions predominate over any questions affecting only individual Class members. Therefore, a class action proceeding is superior to pursuing individual actions on behalf

of each of the millions of former cooperative members. Such common questions include but are not limited to:

- a. Whether Plaintiffs and the Class are entitled to declaratory and injunctive relief due to the failure of Defendants to charge and collect rates in compliance with O.C.G.A. §46-3-340;
- b. Whether Defendants are violating Georgia law requiring that cooperatives operate on a nonprofit basis and that they collect rates that are at all times sufficient to service their obligation to retire patronage capital and to maintain reasonable reserves required for that purpose;
- c. Whether Defendants are breaching the user-owner principle of cooperative ownership, as guaranteed in their bylaws, by refusing to refund patronage capital owned by former members when they terminate service (or by the close of the next accounting period thereafter) or alternatively and at the latest, on a 13-year revolving schedule;
- d. Whether Defendants' bylaws, which grant their boards of directors great discretion to refuse patronage capital retirements, violate Defendants' statutory duty to operate as nonprofits;
- e. Whether Defendants' bylaws, which grant their boards of directors great discretion to refuse patronage capital retirements, are unenforceable as substantively and procedurally unconscionable contract terms;
- f. Whether Defendants have breached their fiduciary duties to former cooperative members by failing to redeem patronage capital owned by those members, and by failing to pay interest on that retained patronage capital;
- g. Whether Defendants have breached their contractual duties to former members by failing to operate according to the cooperative principles of operation at cost and user-ownership;
- h. Whether Defendants possess money that is owned beneficially by Plaintiffs, and whether an implied constructive trust has arisen as a result of that possession pursuant to Georgia Code §53-12-132;

- i. Whether Defendants colluded and conspired together to prevent the redemption of patronage capital to Plaintiffs and to utilize that patronage capital for their own benefit and that of their current members;
- j. Whether Defendants colluded and conspired together to violate Georgia Code §46-3-340;
- k. Whether Defendants kept adequate records and provided required notice to former members of their patronage capital account balances;
- l. Whether Defendants have violated state or federal tax exemptions by abandoning their obligation to return patronage capital; and
- m. Whether the termination of electric service with Defendant retail distribution cooperatives (thereby ending the member relationship) gives rise to an implied trust between former members as beneficiaries and Defendant retail distribution cooperatives as fiduciaries regarding patronage capital contributions remaining and accounted for on the books of the cooperative as property of the former member.

69.

As the claims of Plaintiffs are typical of the claims of the Class, and Plaintiffs have no interests adverse to the other members of the Plaintiff Class or irreconcilably in conflict with them, Plaintiffs are adequate class members.

70.

Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced and competent in the prosecution of electric membership corporation/cooperative class action litigation in the state of Georgia.

71.

A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against large corporate defendants. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

72.

No one except Plaintiffs and their counsel have any incentive to speak for the financial best interests of former members of the electric cooperatives in this state. Individual former members do not have sufficient amounts at stake to justify retention of counsel and prosecution of litigation. Therefore, successful prosecution of this matter as a class action is the only way that the property rights of former members will ever be vindicated.

Defendant Class — All Georgia Retail Distribution Cooperatives that are Members of Oglethorpe and GTC

73.

Pursuant to §9-11-23 of the Georgia Rules of Civil Procedure, Plaintiffs bring this action against a class of Defendants as described below. The Defendant Class consists of:

All Georgia retail electric distribution cooperatives organized under the Georgia Electric Membership Corporation Act that are members of Oglethorpe Power Corporation and/or Georgia Transmission Company, excluding Cobb Electric Membership Corporation.

74.

The number of such cooperatives is so numerous as to make their joinder in one action impracticable.

75.

Walton EMC, Jackson EMC, and Sawnee EMC are Georgia retail electric distribution cooperatives that are members of Oglethorpe and GTC, and are members of the defined Defendant Class. The claims brought against them by Plaintiffs and the Plaintiff Class are the same as the claims that would be brought against the Defendant Class members individually, so their defenses are typical of those that would be asserted by absent class members. Walton, Jackson, and Sawnee EMCs will adequately represent the class.

76.

Certification of a defendant class is appropriate under Georgia Code of Civil Procedure 9-11-23(b)(1) and (2) because the prosecution of separate actions against the retail distribution cooperatives individually creates the risk of inconsistent and varying adjudications, because a final decision on the merits in one action may, as a practical matter, have an impact upon or be dispositive of interests of other members of the Defendant Class, and because members of the Defendant Class have acted in a manner on grounds generally applicable to the class, rendering injunctive and declaratory relief appropriate.

VI. CAUSES OF ACTION

COUNT 1 DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF GEORGIA CODE §46-3-340 (All Plaintiffs' Claim against all Defendants)

77.

Plaintiffs incorporate Paragraphs 1 through 76 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

78.

This is a justiciable controversy within the jurisdiction of this Court, such that the declaration of obligations and responsibilities of the parties is appropriate.

79.

Plaintiffs bring this action against all Defendants to resolve outstanding uncertainties about the duties imposed by Georgia Code §46-3-340, the statutory duty it imposes to set rates at a level sufficient to redeem patronage capital, Plaintiffs' ownership of that patronage capital, Defendants' obligation to redeem or refund that patronage capital, and Defendants' compliance with the mandate that they operate as nonprofits, and that they operate at cost and in accordance with the user-ownership principle.

80.

All Defendants here are organized under the Georgia Electric Membership Corporation Act, §46-3-171 et seq., and are subject to its rights, duties and obligations.

81.

Georgia's Electric Membership Corporation Act, §46-3-340 mandates that electric cooperatives operate without profit, and that they charge rates that "shall be sufficient at all times to" cover operating costs, servicing of debt and other obligations (such as patronage capital retirements) and the maintenance of reasonable cash reserves required for these and other purposes. O.C.G.A. §46-3-340 (a).

82.

Oglethorpe and GTC, and, upon information and belief, the retail distribution cooperative Defendants, all acknowledge in their annual reports and other public

statements that they have a legal obligation to revise their rates as necessary so that those rates are always sufficient to recover costs, service obligations, and provide for reasonable reserves. *See, e.g.* Oglethorpe Power Corporation Annual Report (Form 10-K), Securities and Exchange Commission (FY 2012) at 2, 13; GTC Annual Report (FY 2012) at 23.

83.

Current rates must be sufficient to cover operating costs, service of obligations, and maintenance of cash reserves. The cooperative may also use “net margins” (the rate revenues received in excess of “operating costs and expenses” as defined in the bylaws of all Defendants) to provide for a "reasonable capital structure" under §46-3-340 (b) without jeopardizing compliance with §46-3-340 (a). A cooperative's net margins are accounted for on the cooperative's books by dividing the net margins among the cooperative's rate-paying members, and allocating a patronage capital share to each of them based on the amount of business the member transacts with the cooperative. Regardless, the patronage capital (that is, the allocated margins used to establish and maintain a reasonable capital structure) never becomes the property of the cooperative, but belongs to the individual members until redeemed.

84.

As described in the Factual Allegations, when the retail distribution cooperatives

accumulate net margins, they allocate them directly to their members. When Defendants Oglethorpe and GTC collect earnings in excess of those required to pay their “operating costs and expenses,” as set forth in their bylaws, they allocate those earnings or “net margins” to the specific patronage capital accounts of their retail distribution cooperative members (including Walton, Jackson, and Sawnee EMCs), according to the fixed percentage capacity cost responsibility assigned to each retail distribution cooperative in the Wholesale Power Contracts. The Defendant retail distribution cooperatives then divide the Oglethorpe/GTC patronage allocations apportioned to them amongst their own members, and allocate that patronage capital to the specific, individualized patronage capital accounts of their own members. The fact that the rate payments which generated the net margins at the Oglethorpe/GTC level were first passed through the retail distribution cooperatives and then transferred to Oglethorpe/GTC as wholesale power rate payments does not alter or diminish the retail distribution cooperatives' members and former members' ownership interest in the Oglethorpe/GTC patronage capital.

85.

Because §46-3-340(a) imposes upon Defendants a statutory duty to ensure that *each year's* rate revenue is sufficient to cover payments on its obligations, which includes patronage capital obligations, and to fund and maintain reasonable cash reserves for that purpose, it contemplates that every year, prior years' contributions to the reserve for

retirement of patronage capital will be used for that purpose and replaced with current year rate revenues, which will be used to fund the next year's retirement of patronage capital.

86.

Section §46-3-340's mandate that *current* rates be sufficient "at all times" to cover payments on obligations -- including the obligation to retire patronage capital and to establish and maintain reasonable cash reserves for such retirements -- codifies the cooperative principal of user-ownership, with equity (ownership financing) supplied by current users in proportion to their use of the service being provided. When former members own a significant fraction of the cooperative's accumulated patronage capital (perhaps 30% or more under the facts of this case), rate payments made in years past are subsidizing the rates of current members in a manner that violates both §46-3-340 and the cooperative principle of user-ownership.

87.

All Defendants violate §46-3-340 (a) by failing to charge and collect current rates that are sufficient to cover annual payments of patronage capital obligations to members upon termination of service (or by the next accounting period thereafter). These rates are also insufficient to maintain the reasonable cash reserves required to pay the annual costs of a plan that redeems patronage capital on a fixed, 13-year revolving schedule . As a

result, Oglethorpe has not returned patronage capital since 1997, and GTC has never returned patronage capital. Upon information and belief, some of the 38 retail distribution cooperatives fail to redeem patronage capital at all, while the remainder redeem it on a discretionary basis and on a revolving plan schedule that is far longer than would be necessary if Defendants complied with §46-3-340. This means that rates paid in years past, often by former members like Plaintiffs, are subsidizing the current low rates being offered by Defendants to their current members, in violation of the statute and cooperative principles.

88.

The failure to timely return past years' patronage capital allocations violates the cooperative principle of user-ownership and is an indication that the cooperative's rates are not set at an appropriate level, in compliance with §46-3-340 (a).

89.

Defendants' persistent and continuing refusal to collect rates that allow them to redeem patronage capital at all, or to redeem it in a timely fashion, has directly and proximately harmed Plaintiffs, the beneficial owners and/or assignees of allocations of patronage capital made by Oglethorpe/GTC, and the original owners of patronage capital allocations at the retail distribution cooperative level.

90.

By mandating that the cooperatives operate on a nonprofit basis, charging only those rates that are sufficient to cover operating costs, service of obligations, and the maintenance of reasonable reserves, §46-3-340 also codifies the cooperative principle that service be provided at cost. The statutory duty to provide service at cost necessarily means that rates must be imposed on current members that are sufficient to service the patronage capital obligations owed to former members as current customers would otherwise be subsidized in their rates with free capital provided by former members.

91.

The failure of Defendants to collect full cost-of-service rates from current members prevents them from accumulating sufficient cash reserves to redeem patronage capital owned by former members.

92.

Defendants are required by cooperative principles and Georgia statute to provide service at cost. These duties are intended to benefit Plaintiffs and to protect them from subsidizing the rates of others whose rates are set at less than cost because they fail to include the cost or retiring capital of former members.

93.

As the Defendant retail distribution cooperatives' former members, Plaintiffs are

the very persons intended to be protected by §46-3-340, and the harm they have suffered is the harm the statute was intended to guard against. By mandating that a cooperative's current rates be imposed at a level sufficient to cover not only operating costs but also payments on obligations like patronage capital and the maintenance of reasonable cash reserves for purposes of making such patronage capital retirements, the statute ensures that cooperative users -- current members, that is -- pay for the services received and do not depend on the subsidies that occur if the rates paid by former members are retained indefinitely. Therefore, Plaintiffs are entitled to bring this cause of action to enforce §46-3-340. Alternatively, they have standing to enforce this breach of statutory duty pursuant to Georgia Code §51-1-6.

94.

By failing to charge rates sufficient to cover operations, payments on patronage capital obligations, and the cash reserves required for that purpose, Defendants have breached the two policies codified in §46-3-340—the principle of user-ownership and service at cost. Defendants' breach of the duty imposed in §46-3-340 harms former members disproportionately because they have no vote in cooperative policies or leadership elections, and have no ability to affect the actions of the cooperative.

95.

Harm to the Plaintiffs is continuing as the failure of all Defendants to redeem

patronage capital on a timely basis continues to deny them access to capital that would have been returned to them had Defendants charged adequate rates.

96.

While all Defendants violate §46-3-340, the violations committed by Oglethorpe and GTC would not have been possible without the joint collusive and conspiratorial conduct of the retail distribution cooperatives, which have voting control over those entities' boards. It is within their power to set rates and to provide a financial structure that satisfies the express terms of §46-3-340, as well as the necessary implication of that section, which contemplates the service of obligations like patronage capital and the maintenance of reasonable cash reserves required to fund a revolving plan, with "old" revenues returned to members each year and then replenished by the current year rate revenues mandated by the statute.

97.

Georgia Code §9-4-2 vests in this Court the authority to declare the rights and legal relations of the parties, whether or not further relief is or could be sought, and whether or not additional legal or equitable claims are available to the claimant. Plaintiffs therefore seek an order:

- 1) declaring that Defendants violate O.C.G.A. §46-3-340 (a) by: (a) refusing to charge rates that are sufficient *at all times* to cover "payments . . . on the obligations issued or assumed" by the cooperatives, which include the obligation to retire patronage capital when customers end their membership by terminating

service (or by the next accounting period thereafter), or, alternatively and at the latest, according to a regular 13-year revolving plan; and (b) failing “to establish and maintain reasonable reserves” of cash to pay for these patronage capital refunds, and they further seek an injunction enjoining Defendants from continuing to employ a rate structure that violates §46-3-340 (a);

2) declaring that the provisions of the Defendants' bylaws granting Defendants great discretion to avoid patronage capital retirements are illegal, contrary to law and cooperative principles, and in violation of Georgia Code §46-3-340 because they do not mandate that the cooperative operate at cost and on a nonprofit basis, consistent with the user-ownership principle, which requires that the cooperative's capital be owned by current users, and enjoining them from implementing these illegal bylaws provisions in the future;

3) declaring that because §46-3-340 and cooperative principles mandate that current rates be maintained at a level that is at all times sufficient to replenish the capital contribution made by prior years' rate revenues, they thereby impose upon Defendants the commensurate obligation to return a customer's allocated patronage capital when membership ends through the termination of service (or by the next accounting period thereafter), or, alternatively and at the latest, according to a regular 13-year revolving plan in which at least 7.7% of *all* of the cooperative's annual allocated patronage capital—including patronage capital allocated by Oglethorpe and GTC but not yet redeemed in cash — is dedicated to the repayment of patronage capital, and enjoining them from implementing policies or adopting and enforcing bylaws that do not provide for such timely redemption,

4) declaring that the Defendants' decisions concerning the redemption of patronage capital credits of former members through the rates charged to current members, as required by O.C.G.A. §46-3-340, presents the Defendants with an irreconcilable conflict of interest;

5) declaring that Plaintiffs are the owners of the patronage capital generated from the "net margins" or excess earnings of the Defendant retail distribution cooperatives of which they were members, which patronage capital has been allocated to them on the books of the retail distribution cooperatives, and enjoining Defendants from engaging in conduct contrary to that ownership;

6) declaring that Plaintiffs are the beneficial owners and assignees of the patronage capital generated from the "net margins" or excess earnings of Oglethorpe and/or GTC, which is first allocated to the retail distribution cooperatives, and ultimately reallocated to Plaintiffs on the books of the retail distribution cooperatives of which they were members, and enjoining Defendants from engaging in conduct contrary to that ownership;

7) declaring that the Defendant retail distribution cooperatives exercise control over Oglethorpe and GTC through the voting strength they maintain on the Oglethorpe and GTC boards of directors, and ordering them to exercise that control to implement a rate structure that allows Oglethorpe and GTC to begin revolving 7.7% of their booked patronage capital annually for the purpose of redeeming patronage capital;

8) declaring that the Defendant retail distribution cooperatives colluded to exercise their voting power over the boards of Oglethorpe and GTC, an exercise of power that compelled them to adopt a rate structure that violated §46-3-340 and prevented them from redeeming patronage capital, and enjoining the Defendant retail distribution cooperatives from continuing such conduct, and further enjoining them to use their majority control over the Oglethorpe and GTC boards to adopt a compliant rates structure that will permit Oglethorpe and GTC to redeem patronage capital.

98.

All Plaintiffs have been directly and proximately harmed by Defendants' refusal to charge rates to current members sufficient to cover required payments on patronage capital obligations and to establish and maintain reasonable reserves of cash required to fund patronage capital payments.

COUNT 2
DECLARATORY AND INJUNCTIVE RELIEF
(All Plaintiffs' Claim as to All Defendants)

Walker, et al., v Oglethorpe Power Corp, et al.
Superior Court, DeKalb County
Complaint for Declaratory and Injunctive Relief and Damages

99.

Plaintiffs incorporate Paragraphs 1 through 98 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

100.

This is a justiciable controversy within the jurisdiction of this Court, such that the declaration of obligations and responsibilities of the cooperative is appropriate.

101.

Plaintiffs bring this action against all Defendants to resolve outstanding uncertainties about whether Defendants' indefinite and wrongful retention and possession of the patronage capital contributions of former members represents a present and future breach of fiduciary duty or contractual obligations, or constitutes unjust enrichment, giving rise to an implied constructive trust.

102.

For the above-stated reasons, Plaintiffs allege that Defendants' past, present and future indefinite retention of their patronage capital is not only wrongful and in violation of Plaintiffs' rightful and beneficial ownership of such capital, but in violation of cooperative principles that cooperatives operate at cost, on a nonprofit basis, and that they be user-owned, as well as Defendants' tax-exempt status (or the tax-exclusion afforded to patronage capital allocated on the books of a non-exempt cooperative like

Oglethorpe). Because equity prohibits Defendants' continued and indefinite retention of their patronage capital, Plaintiffs seek an order:

- 1) declaring that Plaintiffs are the beneficial owners of the patronage capital generated from the "net margins" or excess earnings of the Defendant retail distribution cooperatives of which they were members, which patronage capital has been allocated to them on the books of the retail distribution cooperatives, and enjoining Defendants from engaging in conduct contrary to that ownership;
- 2) declaring that Plaintiffs are the beneficial owners and assignees of the patronage capital generated from the "net margins" or excess earnings of Oglethorpe and/or GTC, which is first allocated to the retail distribution cooperatives, and ultimately re-allocated to Plaintiffs on the books of the retail distribution cooperatives of which they were members, and enjoining Defendants from engaging in conduct contrary to that ownership;
- 3) declaring that the provisions of Defendants' bylaws, which grant Defendants great discretion to retain patronage capital indefinitely, are illegal, contrary to law and cooperative principles because they do not mandate that the cooperative operate at cost and on a nonprofit basis, with the majority of their capital owned by current users, and enjoining them from further enforcement of such bylaws provisions and enjoining them from continuing to enforce these illegal provisions in their bylaws;
- 4) declaring that the provisions of Defendants' bylaws, which grant Defendants great discretion to retain patronage capital indefinitely, are illegal, contrary to law and cooperative principles because they do not mandate that the cooperative redeem patronage capital *at all* and enjoining them from further enforcement of such bylaws provisions and enjoining them from continuing to enforce these illegal provisions in their bylaws;
- 5) declaring that the provisions of Defendants' bylaws, which grant Defendants great discretion to retain patronage capital allocated to them by Oglethorpe and GTC and re-allocated to members and former members, including Plaintiffs, until cash payment is made by Oglethorpe, are illegal, contrary to law and cooperative principles and enjoining them from further enforcement of such

bylaws provisions and enjoining them from continuing to enforce these illegal provisions in their bylaws;

6) declaring that the provisions of the Defendants' bylaws that grant Defendants great discretion to avoid patronage capital retirements on the ground that the financial condition of the cooperatives could be impaired thereby, are unenforceable contract terms entered into in consideration of an obligation to return patronage capital that is illusory because it is within the power of the cooperatives to impair their own financial condition, and thereby present patronage capital retirements, by failing to charge rates to current customers that are adequate for patronage capital retirements, and enjoining them from implementing these unenforceable bylaws provisions in the future;

7) declaring that the provisions of the Defendants' bylaws which grant Defendants great discretion to avoid patronage capital retirements are procedurally unconscionable contract terms because they were not bargained for or called to the attention of captive members of the cooperatives, who had no choice of their electricity provider, and are substantively unconscionable because they are substantively unfair and inequitable and violate cooperative principles, and enjoining them from implementing these unenforceable bylaws provisions in the future;

8) declaring that an express or implied trust arises between the Defendants as fiduciaries and their members and former members as beneficiaries with regard to allocated net margins left in the hands of the Defendants to manage as patronage capital rather than being immediately returned to members as patronage refunds at the close of the year of allocation, and enjoining Defendants from engaging in conduct contrary to that fiduciary relationship;

9) declaring that Plaintiffs obtain a vested and possessory interest in retired patronage capital no later than the date on which a cooperative's board approves the retirement of some or all of that patronage capital and directing the Defendant retail distribution cooperatives to refund to Plaintiffs any patronage capital retired by Oglethorpe or GTC but not yet refunded to Plaintiffs and enjoining Defendants from engaging in conduct contrary to that interest, and directing them to disgorge funds wrongfully retained, in violation of that interest;

10) declaring that the Defendants suffer an irreconcilable conflict of interest in their decisions about the redemption of patronage capital credits of former members at the expense of their current members, and that their decisions on these issues are not protected from judicial review by the business judgment rule;

11) declaring that Defendants have an obligation to disclose to former members on at least an annual basis the amount of unredeemed patronage capital allocated to them on the cooperative's books, the amounts thereof generated at the wholesale and retail levels, and the amount of each, if any, being redeemed each year, as well as an obligation to maintain records sufficient to allow Defendants to locate these former members for the purpose of providing such disclosures and/or delivering to them any patronage capital redemption to which they are entitled, and enjoining them from refusing to maintain such records or provide such annual disclosures;

12) declaring that Defendants have breached their fiduciary duties to Plaintiffs by failing to maintain a rate structure and otherwise operate Defendant cooperatives so that patronage capital credits can be redeemed when customers end their membership by terminating service (or by the next accounting period thereafter), or, alternatively and at the latest, on a reasonable cycle of 13 years, and enjoining them from continuing that conduct into the future.

103.

All Plaintiffs have been directly and proximately harmed by Defendants' refusal to operate in compliance with cooperative principles and by their continuing illegal conduct.

COUNT 3
UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST
(All Plaintiffs against All Defendants)

104.

Plaintiffs incorporate Paragraphs 1 through 103 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

105.

As alleged in detail above, Defendants have indefinitely retained, or retained for an unreasonably long period of time, the patronage capital owned by former members. These policies, caused by Defendants' refusal to charge rates that comply with Georgia Code ¶46-3-340, violate that statute as well as cooperative principles of user-ownership and operation at cost.

106.

Plaintiffs are the owners of the patronage capital allocated to them on Defendants' books. As former members, they have *no* obligation to furnish part of the cooperatives' capital.

107.

Defendants' indefinite retention of patronage capital, or retention for an unreasonably long period of time, violates the cooperative principles under which Defendants promised to operate at cost and on a nonprofit basis with user-ownership.

108.

Defendants' retention of former members' patronage capital, either indefinitely or for unreasonably long periods of time, benefits the retail distribution cooperatives and their current members at the expense of former members like Plaintiffs by subsidizing current members' rates and by providing the cooperatives a no-cost source of equity.

Thus, all Defendants have been unjustly enriched at the expense of Plaintiffs and Class members.

109.

Defendants have not only adopted policies to maintain an indefinite hold on patronage capital contributed by Plaintiffs, but they conspired to keep from Plaintiffs the patronage capital retirements made by Oglethorpe in 1990-1992 and 1997, payments to which Plaintiffs had an immediate possessory interest.

110.

Specifically, in 1990-1992, Oglethorpe redeemed some or all of the patronage capital it allocated to the retail distribution cooperatives during 1976-1978. The retail distribution cooperatives had previously allocated that patronage capital to their own members, including members of the class. Though Oglethorpe retired some or all of those 1976-1978 allocations, vesting in Plaintiffs an immediate possessory interest in the patronage capital allocated to them in 1976-1978, the retail distribution cooperatives did not make payment to the Plaintiffs.

111.

Additionally, in 1997, Oglethorpe declared a \$49 million patronage capital retirement, representing 14.572% of all patronage capital allocated between 1979-1995. Those allocations had been made to the retail distribution cooperatives in 1979-1995, and

these retail distribution cooperatives had in turn allocated their share to their own members, including Plaintiffs. When Oglethorpe redeemed the 14.572% of 1979-1995 patronage capital, no payment of money was ever made to those members for their share of the patronage capital redemption.

112.

Once Oglethorpe's board made the decision to make the 1997 \$49 million redemption and the 1990-1992 redemption, those members and former members with 1979-1995 or 1976-1978 allocations had a vested and possessory right to the money. However, Oglethorpe and the retail distribution cooperatives conspired to keep that money from Plaintiffs.

113.

All Plaintiffs have been harmed by the continued and wrongful retention of patronage capital contributions made by Plaintiffs but never redeemed, and Defendants have been unjustly enriched. Therefore, pursuant to O.C.G.A. §53-12-132, Plaintiffs ask this Court to impose the equitable remedy of an implied constructive trust on the patronage capital accounts maintained by all Defendants, which represent funds that should have been returned to Plaintiffs.

COUNT 4
DIRECT ACTION FOR BREACH OF FIDUCIARY DUTY
(All Plaintiffs against Retail Distribution Cooperative Defendants)

Walker, et al., v Oglethorpe Power Corp, et al.
Superior Court, DeKalb County
Complaint for Declaratory and Injunctive Relief and Damages

114.

Plaintiffs incorporate Paragraphs 1 through 113 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

115.

The retail distribution cooperatives are the agents and trustees of their former members with respect to the management of patronage capital allocations. This equity was furnished to the retail distribution cooperatives by their members (including Plaintiffs), but it did not become the property of the cooperatives.

116.

Defendants have a duty to set rates in compliance with O.C.G.A. §46-3-340 and to return allocated patronage capital on a regular schedule, a duty they have breached. Their failure to charge rates that are sufficient "at all times" to cover retirement payments for patronage capital obligations and to maintain reasonable reserves of cash for that purpose has caused the Defendants to subsidize current customers' rates with the rate payments made years ago by former members, in violation of §46-3-340 and the duty to operate at cost. This breach of legal duty has also resulted in either a complete failure to redeem patronage capital, or a failure to redeem it on a reasonable and fixed schedule.

117.

Defendants' breach of legal duty is motivated by an irreconcilable conflict, which

pits the cooperatives' obligations to act as fiduciaries with respect to the patronage capital interests of former members against their institutional self-interest in obtaining and retaining no-cost equity capital and currying favor with current (voting) members. Given a choice, the cooperatives will act in favor of the current members by adopting low rates that do not earn revenues sufficient at all times to cover payments for the retirement of patronage capital obligations or to maintain reasonable cash reserves for that purpose, as mandated by §46-3-340. Such depressed rates do not ensure user-ownership, and do not fulfill the duty to operate at cost. Instead, they keep current rates low, while retaining former members' capital indefinitely. Those former members have no remaining power to influence cooperative policy.

118.

The Defendant retail distribution cooperatives control the boards of both Oglethorpe and GTC through the voting majority they hold on those boards. In order to maximize their ability to keep rates as low as possible for the current retail members that elect them, the retail distribution cooperatives have a comparable incentive to keep wholesale power and transmission costs depressed.

119.

Upon information and belief, the Defendant retail distribution cooperatives collude and conspire with one another and with Oglethorpe and GTC to charge below-cost rates

themselves, and to ensure that Oglethorpe and GTC charge low wholesale rates, creating "savings" on wholesale power and transmission services that can then be passed on to the current retail distribution cooperative voters.

120.

Because both the retail distribution rates and the wholesale power and transmission rates are insufficient to cover required payments on patronage capital obligations owed to former members and to establish reasonable cash reserves for that purpose, all defendants violate §46-3-340, and all breach the contractual promise made in their bylaws to operate according to cooperative principles by operating at cost, and on a user-ownership basis.

121.

The Defendant retail distribution cooperatives' ever-present interest in serving the interests of current members at the expense of former members institutionalizes a motive to violate the cooperative principles of operation at cost and user-ownership, as well as O.C.G.A. §46-3-340. This leaves former members the victims.

122.

Retail distribution cooperatives have violated and continue to violate their fiduciary duties as agents or trustees by, among other things, refusing to return former members' patronage capital upon termination of service (or the close of the next

accounting period thereafter), or on a cycle of 13 years, and by failing to pay interest on that capital until it can be returned.

123.

Former members suffer a special injury or damage not suffered by current members because former members are not permitted to vote in board elections, board members favor the interests of current members, and the patronage capital of former members is not returned to them in a timely manner, but rather is retained and used to benefit current members.

124.

All Plaintiffs have been directly and proximately harmed by the retail distribution cooperatives' breach of fiduciary duty.

**COUNT 5
BREACH OF CONTRACT
(All Plaintiffs against all Defendants)**

125.

Plaintiffs incorporate Paragraphs 1 through 124 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

126.

Upon information and belief, all Defendants' bylaws contain a promise by the cooperative to operate on a nonprofit and cooperative basis for the benefit of their

members, as well as a provision stating that the bylaws shall constitute a contract as between the cooperative and its members. *See, e.g.*, Bylaws of Walton EMC, ¶¶9.01 and 9.02; Bylaws of Oglethorpe Power Company at Art. VIII, §1. The promise to operate on a nonprofit cooperative basis memorializes the nonprofit mandate of O.C.G.A. §46-3-340.

127.

Even where the bylaws do not affirmatively so state, they still constitute an enforceable contract because they were supported by consideration, contained a mutual exchange of promises, and confirm that a meeting of the minds occurred with respect to an essential term of that agreement, which is that the cooperatives operate on a nonprofit cooperative basis for the mutual benefit of the members who are their customers.

128.

Plaintiffs are third-party beneficiaries of the bylaws contracts between the retail distribution cooperatives and Oglethorpe and/or GTC, which they collectively own. The bylaws contracts executed between the retail distribution cooperatives and Oglethorpe/GTC were made for the benefit of the retail distribution cooperative members. Without a wholesale power supply and a way to transport that wholesale power, the retail distribution cooperatives would have no way to fulfill their sole mission—providing retail electric service to their members.

129.

While Plaintiffs no longer receive service from these Defendants, they continue to own patronage capital and to hold a significant beneficial ownership interest in the cooperatives. The contractual promise and statutory requirement to operate on a cooperative nonprofit basis and to operate at cost—both at the retail distribution cooperative level and the wholesale power and transmission level—was to protect them from the indefinite retention of their patronage capital, protection they have lost due to Defendants' breaches of these contractual promises, which continue to this day.

130.

Operation on a "cooperative nonprofit basis," as defined in the economic theory of cooperatives, means that the persons who furnish the cooperative's capital must be its current user-members, as dictated by the user-ownership principle. When current rates are subsidized by the no-cost capital previously contributed by former members and retained as patronage capital indefinitely, or for unreasonably long periods of time, the cooperative violates the principle of user ownership. As the retained capital of former members grows, so does their ownership interest in the cooperative, meaning that former members end up owning a large share, in this case approximately 30%, of the cooperative's equity, its patronage capital. When current members' rates are subsidized by the no-cost capital previously contributed by former members, the cooperative also

violates the principle of operation at cost, another fundamental aspect of what it means to operate on a "cooperative nonprofit basis." This is the case in Georgia, where former members including Plaintiffs do own a significant portion, estimated to be 30%, of all of the cooperatives' equity.

131.

As alleged in Count 1 above, these cooperative principles of user-ownership and operation at cost are codified in Georgia Code §46-3-340, which mandates that rates must be sufficient *at all times* to cover payments for the retirement of patronage capital obligations owed to former members and to fund and maintain a reasonable cash reserve for retirement of patronage capital. The statute does not permit cooperatives to depend on prior years' capital contributions to maintain cash reserves at a reasonable level required for retirements of patronage capital and other purposes. By mandating that *current rates* be sufficient to fund such reserves, §46-3-340 contemplates a system in which prior years' contributions to cash reserves become unnecessary as new, current year rate revenues flow in, allowing and requiring the prior years' contributions to those reserves to be used to cover patronage capital retirements in the current year. This revolving system facilitates the principles of operation at cost and user ownership by ensuring that current members are paying not only the costs of operation, but also the costs of servicing patronage capital retirements and maintaining reasonable reserves for

that purpose.

132.

As alleged above, the Defendant cooperatives have violated cooperative principles and §46-3-340 by, among other things, failing to collect rates that are sufficient to cover payments to retire patronage capital obligations of the cooperatives and fund reasonable reserves for that purpose, and by retaining indefinitely or for unreasonably long periods of time the patronage capital owned by former members. As a result, in gross violation of the user-ownership principle, a significant fraction of the retail distribution cooperatives' capital structures (believed to be 30%) are funded by the patronage capital owned and contributed by former members.

133.

Defendants' refusal to operate in a manner consistent with cooperative principles as promised in their bylaws has directly and proximately harmed all Plaintiffs.

134.

In addition, Oglethorpe breached contractual promises to revolve patronage capital on a fixed and regular basis, promises to which the Plaintiffs were third-party beneficiaries as the beneficial owners of that patronage capital. Until 1992, Oglethorpe's bylaws contained a provision promising to return patronage capital on a 13-year cycle, with patronage capital booked in 1979 to be redeemed 1992, and so on.

135.

Upon information and belief, all of the patronage capital allocated by Oglethorpe between 1974 and 1978 was redeemed under this schedule. In addition, 14.572% of the patronage capital booked between 1979 and 1995 was redeemed while that cycle was in effect.

136.

That 13-year revolving redemption policy was unilaterally revoked in 1992, replaced by a 30-year revolving cycle which was in effect from 1993-1996.

137.

All of the patronage capital allocated by Oglethorpe under the 13-year plan should have been redeemed no later than 2005.

138.

In 1997, the Oglethorpe board, controlled by the retail distribution cooperatives, unilaterally repealed the 30-year redemption policy and did not replace it. Upon information and belief, the retail distribution cooperatives conspired and colluded with the Oglethorpe board to unilaterally breach this contractual promise, harming Plaintiffs.

139.

Plaintiffs were unaware of these policies and breaches, but instead relied on the contractual promises made by Defendants in their bylaws. Defendants concealed their

breach of contract from former members like Plaintiffs by willfully failing to keep records required for them to make annual patronage capital reports to former members and by failing to make such reports. Plaintiffs were directly and proximately harmed by Defendants' breaches of contract.

COUNT 6
SPECIFIC PERFORMANCE
(All Plaintiffs against All Defendants)

140.

Plaintiffs incorporate Paragraphs 1 through 139 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

141.

As alleged with specificity in Count 5 above, Defendants' bylaws all made contractual promises to operate at cost and on a nonprofit basis, and according to cooperative principles, including user-ownership.

142.

Performance of these contractual promises would have ensured that rates were maintained at a level that would permit accumulated patronage capital to be redeemed on a fixed and reasonable FIFO schedule like the 13-year contractual schedule Oglethorpe supposedly followed for the first 18 years of its existence. All Defendants breached those promises, and colluded and conspired together to induce those breaches.

143.

In addition, Defendants colluded and conspired together to induce Oglethorpe to breach its specific promise to redeem patronage capital on a 13-year schedule (1974-1992) and later on a 30-year schedule (1993-1996). Had Oglethorpe not breached the promise to redeem patronage capital on a 13-year cycle, all of the patronage capital allocated prior to 1993, patronage capital owned by Plaintiffs, would have been redeemed in full by 2005.

144.

All Plaintiffs were directly and proximately harmed by Defendants' breaches of contract as outlined herein.

145.

Under the facts and circumstances of this case, it is just and equitable for this Court to order, as an alternate remedy, that Defendants specifically perform the obligations contained in their bylaws contracts. For all cooperatives, this would require that they operate at cost and on a user-ownership basis by instituting a rate structure that is sufficient at all times to cover payments required to service the patronage capital obligations of the cooperatives, and maintenance of reasonable cash reserves for that purpose, as mandated in Georgia Code §46-3-340. It also requires that they adopt a revolving plan to redeem patronage capital after a reasonable retention period like, for

example, the 13-year revolving cycle that Oglethorpe supposedly implemented until 1992.

COUNT 7
CONSPIRACY
(All Plaintiffs against all Defendants)

146.

Plaintiffs incorporate Paragraphs 1 through 145 of their Complaint as if the same were set forth herein. They plead additionally and in the alternative that:

147.

As alleged in detail above, for decades, all Defendants have violated statutory, legal and/or equitable duties to operate on a nonprofit basis, adhering to cooperative principles, including operation at cost and on a user-ownership basis. As a result, they have refused to collect rates that are at all times sufficient to cover payments required to service the patronage capital obligations of the cooperatives and to maintain reasonable cash reserves for that purpose, in direct contravention of Georgia Code §46-3-340. They have indefinitely retained Plaintiffs' patronage capital though they have a duty to return it, and they have improperly converted and retained patronage capital retirements to which Plaintiffs had an immediate possessory right.

148.

This unlawful conduct has occurred as a result of the irreconcilable conflict that

causes the retail distribution cooperatives to sacrifice compliance with law and the interests of former members to the imperative to curry favor with current ratepayers, who have voting rights at board elections. This conflict has resulted in collusive and conspiratorial behavior, in which the retail distribution cooperatives and Oglethorpe/GTC have acted and conspired together by engaging in at least the following unlawful or tortious acts:

- a. Maintaining current rates at a depressed price below that which would be required to cover payments to service the cooperatives' patronage capital obligations and maintaining reasonable cash reserves for that purpose, all as required by statute, thereby leaving insufficient funds to redeem patronage capital on a reasonable and predictable schedule;
- b. Breaching their contractual duties to adhere to cooperative principles and breaching Oglethorpe's contractual promise to revolve patronage capital on a 13- or a 30-year cycle;
- c. Breaching their fiduciary duties to adhere to cooperative principles, comply with non-discretionary statutory mandates, and manage the cooperatives' financial health in a manner that would allow the return of patronage capital when a member terminates service (or by the close of the next accounting period thereafter) or, alternatively and at the latest, on a reasonable, fixed and predictable 13-year schedule;
- d. Retaining Plaintiffs' patronage capital on either an indefinite basis, or for an unreasonably long period of time;
- e. Retaining patronage capital redemption payments made by Oglethorpe in 1990—1992 and 1997 (\$49 million), in violation of Plaintiffs' ownership in those payments, unjustly enriching the retail distribution cooperatives and breaching contractual, equitable and fiduciary duties.

149.

Plaintiffs have been directly and proximately harmed by Defendants' wrongful and conspiratorial acts.

**COUNT 8
ATTORNEYS' FEES**

150.

Plaintiffs incorporate Paragraphs 1 through 149 of their Complaint as if the same were set forth herein.

151.

Pursuant to O.C.G.A. §13-6-11 and fee-shifting statutes applicable to causes of action for breach of contract and declaratory judgment, Plaintiffs are entitled to recover from Defendants reasonable attorney's fees. Pursuant to the common fund theory for the award of attorney's fees in class action litigation, Plaintiffs are entitled to recover for the benefit of their counsel a reasonable percentage of the common fund recovery generated through their efforts on behalf of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- a) Declaring, among other things, that Defendants are required to retire patronage capital when customers end their membership by terminating service (or by the next accounting period thereafter), or, alternatively and at the latest, according to a regular 13-year revolving plan that returns 7.7% of total equity

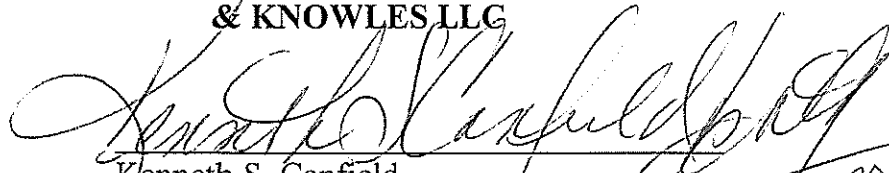
annually and “to establish and maintain reasonable reserves” of cash to pay for these patronage capital refunds, and enjoining them from refusing to do so;

- b) Awarding Plaintiffs an amount to be determined that represents their damages on account of the Defendants’ breaches of their legal, contractual and fiduciary duty;
- c) Awarding pre-petition and post-petition interest as appropriate;
- d) Granting Plaintiffs the cost of prosecuting this action, including reasonable attorneys’ fees, expert fees and costs reasonably incurred; and
- e) Granting such other and further relief as this Court deems just and proper.

SIGNATURES BEGIN ON FOLLOWING PAGE


This the 10th day of March, 2014.

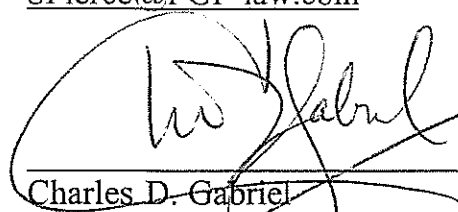
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**ATTORNEYS FOR PLAINTIFFS AND
PROPOSED CLASS**

FILED
2014 MAR 13 AM 9:21
CLERK OF SUPERIOR COURT
DEKALB COUNTY, GA

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IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

EDGAR "ED" WALKER, PHILIP
CALTABIANO, GRANT MEADE and
SAMER KHASHAN, Individually and on
Behalf of Others Similarly Situated

Plaintiffs,

vs.

OGLETHORPE POWER
CORPORATION
(aka OGLETHORPE ELECTRIC
MEMBERSHIP CORPORATION);
GEORGIA TRANSMISSION
CORPORATION;
and
WALTON ELECTRIC MEMBERSHIP
CORPORATION, JACKSON ELECTRIC
MEMBERSHIP CORPORATION,
and SAWNEE ELECTRIC
MEMBERSHIP CORPORATION, on
Behalf of Themselves and other Georgia
Electric Membership Cooperatives
Similarly Situated

Defendants.

Civil Action File No. 14CV2932-8

***TO BE SERVED WITH
SUMMONS AND COMPLAINT***

**PLAINTIFFS' FIRST INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS TO DEFENDANTS**

Plaintiffs, pursuant to Rule 33 and 34 of the Georgia Civil Practice Act, request that Defendants answer the following interrogatories and produce the following documents within forty-five (45) days from the date of service at the offices of counsel

for Plaintiffs, Doffermire Shields Canfield & Knowles, LLC, 1355 Peachtree St NE #1600, Atlanta, GA 30309.

DEFINITIONS

“You” and “your” shall refer collectively to Defendants Oglethorpe Power Corporation, Georgia Transmission Corporation, Walton Electric Membership Corporation, Sawnee Electric Membership Corporation, and Jackson Electric Membership Corporation;

"Defendants" shall refer collectively to Oglethorpe Power Corporation, Georgia Transmission Corporation, Walton Electric Membership Corporation, Sawnee Electric Membership Corporation, and Jackson Electric Membership Corporation;

“Plaintiff(s)” shall refer to the named Plaintiffs plus all members of the proposed Class;

“Named Plaintiffs” shall refer to those individual Plaintiffs named in the caption of this civil action individually and as Proposed Class Representatives;

The term “document” or “documents” shall have the broadest meaning possible under the Georgia Civil Practice Act and by way of illustration and not limitation includes any tangible thing upon which information is or has been stored, recorded or communicated in the custody, control or possession of Defendants or of which Defendants has knowledge, including without limiting the generality of its meaning, the originals or copies of all invoices, letters, correspondence, memorandums, handwritten

notes, periodicals, pamphlets, reports, financial records, canceled checks, deposit slips, bank statements, accounts, journals, ledger cards, profit and loss statements, financial statements, audited and unaudited reports, audits, studies, working papers, corporate minutes, minute books, diaries, deeds, contracts, agreements, understandings, charts, papers, drafts, indexes, data sheets, data processing cards, invoices, contracts, agreements, purchase orders, tapes, stenographical and bulletins, circulars, studies, reports, notices, summaries, books, messages, instructions, pictures, photographic slides, film, microfilm, graphs, charts, statistical compilations, magnetic discs, external hard drives, removable jump drives, Subscriber Identity Module (SIM) or other smart cards/ smart chips, integrated circuit card, records and tapes and other media, computer cards, tapes, printouts, reports, CD ROMS, DVDs, and other machine-readable records and data, sound recordings, and every draft or copy of a document which is not identical to the original or which draft or copy contains any commentary or notation whatsoever that does not appear on the original.

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

1. Please state the aggregate dollar amount of patronage capital allocated to members of each Defendant for each year from 1936 through the present.
2. Please state the current dollar balances of patronage capital of all members, whether current or former, that remain outstanding and/or unretired for each Defendant both in the aggregate for all years and for each individual year of allocation.

3. Please state the current dollar balances of patronage capital of former members that remain outstanding and/or unretired for each Defendant both in the aggregate for all years and for each individual year of allocation.

4. For Oglethorpe Power Corporation and Georgia Transmission Corporation, please state the current dollar balances of re-allocated wholesale power cooperative patronage capital of former members of your member distribution cooperatives that remain outstanding and/or unretired, both in the aggregate for all years and for each individual year of allocation.

5. Please state the number of patronage capital accounts of all members, whether current or former, for each Defendant that have balances in excess of zero and remain outstanding and/or unretired both in the aggregate for all years and for each individual year of allocation.

6. Please state the number of patronage capital accounts of former members for each Defendant that have balances in excess of zero and remain outstanding and/or unretired both in the aggregate for all years and for each individual year of allocation.

7. For Oglethorpe Power Corporation and Georgia Transmission Corporation, please state the number of re-allocated wholesale power patronage capital accounts of former members of your member distribution cooperatives that have balances in excess of zero and remain outstanding and/or unretired both in the aggregate for all years and for each individual year of allocation.

8. Please state the date and amount of each distribution or retirement of patronage capital for each Defendant.

9. Please state the allocation years or portions thereof that were retired by each such distribution or retirement of patronage capital by each Defendant.

10. If Oglethorpe Power Corporation's or Georgia Transmission Corporation's answers to Plaintiffs' First Requests for Admission No. 20, 37, or 52 were anything other than unqualified admissions, please set forth all facts supporting the answer you provided.

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION TO ALL DEFENDANTS

Pursuant to Georgia Rule of Civil Procedure 34, please produce:

1. All documents with respect to the patronage capital accounts of all Plaintiffs (Named Plaintiffs and Plaintiff Class Members), both in hard copy and electronic database or MS Excel format, including individual ledgers of account or individual statements reflecting the following minimum information:

- a. Name of the account holder;
- b. Customer account number;
- c. Location of service;
- d. Last known address;
- e. Social security number or Federal Employer Identification Number (FEID);
- f. Period of service;
- g. Patronage capital allocations by date of allocation;
- h. Any and all adjustments to the Named Plaintiff's capital account;
- i. Running balance of the Named Plaintiff's capital account;

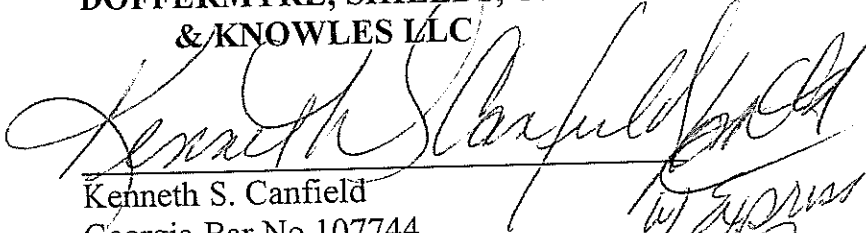
- j. Date of last allocation;
 - k. Date of last retirement or disbursement of accumulated patronage capital to the account holder; and
 - l. Date of last statement provided the account holder.
-
- 2. Any and all documents reflecting efforts of any Defendant to provide at least annual notification or disclosure of the patronage capital allocated to its current and former members from 1974 to the present, including any efforts made to maintain current addresses for both current and former members.
 - 3. The articles of incorporation for each Defendant, including but not limited to any amendments adopted between 1936 and the present.
 - 4. The by-laws of each Defendant, including but not limited to any amendments adopted between 1936 and the present.
 - 5. All wholesale power contracts and New Member Service Agreements of each Defendant from 1974 to the present.
 - 6. All audited or unaudited financial statements and tax returns for each Defendant from 2002 to the present.
 - 7. All documents identifying and describing the policies of each Defendant relating to patronage capital, including but not limited to policies concerning the allocation, retirement and/or discounting of patronage capital and all equity management plans and/or policies from 1974 to the present.

8. All minutes of the Board of Directors and any committees of the Board of Directors of any Defendant from 1974 to the present that discuss patronage capital/capital credits.
9. All documents relating to any potential or actual distribution or retirement of patronage capital by any Defendant between 1974 and the present.
10. All documents exchanged between any Defendant and the Rural Electrification Administration (REA) and/or the Rural Utilities Service (RUS) between 1936 and the present relating to the allocation, ownership or retirement of patronage capital.
11. All documents relating to Oglethorpe Power Corporation's 1997 distribution/retirement of \$49 million in patronage capital and the capitalization of Georgia Transmission Corporation.
12. All documents regarding the initial establishment of a 13-year revolving plan by Oglethorpe Power Corporation, its subsequent amendment to a 30-year plan and the subsequent elimination of that plan.
13. If Oglethorpe Power Corporation's or Georgia Transmission Corporation's answers to Plaintiffs' First Requests for Admission No. 20, 37, or 52 were anything other than unqualified admissions, please produce all documents supporting the answer you provided.

SIGNATURES BEGIN ON FOLLOWING PAGE

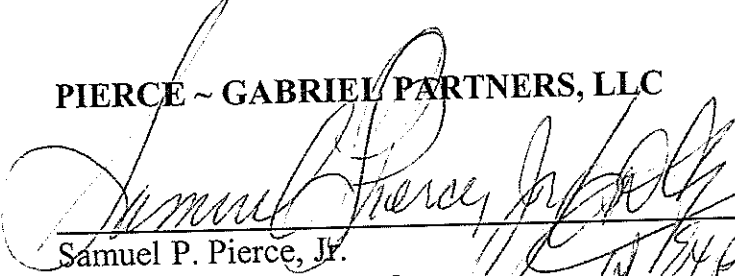
This the 10th day of March, 2014.

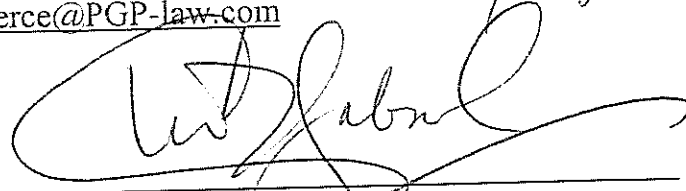
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**ATTORNEYS FOR PLAINTIFFS AND
PROPOSED CLASS**

FILED
2014 MAR 13 AM 9:38
CLERK OF SUPERIOR COURT
DEKALB COUNTY GA

Walker, et al., v Oglethorpe Power Corp, et al.
Superior Court, DeKalb County

Plaintiffs' First Interrogatories and Requests for Production of Documents to Defendants

With Co-Counsel to be admitted *Pro Hac Vice*:

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IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

EDGAR "ED" WALKER, PHILIP
CALTABIANO, GRANT MEADE and
SAMER KHASHAN, Individually and on
Behalf of Others Similarly Situated

Plaintiffs,

vs.

OGLETHORPE POWER
CORPORATION
(aka OGLETHORPE ELECTRIC
MEMBERSHIP CORPORATION),
GEORGIA TRANSMISSION
CORPORATION;
and
WALTON ELECTRIC MEMBERSHIP
CORPORATION, JACKSON ELECTRIC
MEMBERSHIP CORPORATION,
and SAWNEE ELECTRIC
MEMBERSHIP CORPORATION, on Behalf of
Themselves and other Georgia Electric
Membership Cooperatives Similarly Situated

Defendants.

Civil Action File No.

14CV2932-8

*Discovery to be Served with Summons
and Complaint*

PLAINTIFFS' FIRST REQUESTS FOR ADMISSIONS TO
DEFENDANTS OGLETHORPE POWER CORPORATION
AND GEORGIA TRANSMISSION CORPORATION

Pursuant to Rule 36 of the Georgia Civil Practice Act (O.C.G.A. § 9-11-36), Plaintiffs hereby request that Defendant Oglethorpe Power Corp. ("OPC") and Georgia Transmission Corporation ("GTC"): the Defendants OPC and GTC admit the truth of each of the individually numbered requests set forth below within forty-five days of service:

1. That OPC is a member-owned electric cooperative.
2. That OPC's members are the following 38 retail distribution cooperatives:
 1. Altamaha EMC
 2. Amicalola EMC
 3. Canoochee EMC
 4. Carroll EMC
 5. Central Georgia EMC
 6. Coastal Electric Cooperative
 7. Cobb EMC
 8. Colquitt EMC
 9. Coweta-Fayette EMC
 10. Diverse Power
 11. Excelsior EMC
 12. Flint Energies
 13. Grady EMC
 14. GreyStone Power Corporation
 15. Habersham EMC
 16. Hart EMC
 17. Irwin EMC
 18. Jackson EMC
 19. Jefferson Energy Cooperative
 20. Little Ocmulgee EMC
 21. Middle Georgia EMC
 22. Mitchell EMC
 23. Ocmulgee EMC
 24. Oconee EMC
 25. Okefenoke Rural EMC
 26. Planters EMC
 27. Rayle EMC
 28. Satilla Rural EMC
 29. Sawnee EMC
 30. Slash Pine EMC
 31. Snapping Shoals EMC
 32. Southern Rivers Energy
 33. Sumter EMC
 34. Three Notch EMC
 35. Tri-County EMC
 36. Upson EMC
 37. Walton EMC

38. Washington EMC

3. That GTC is a member-owned electric cooperative.
4. That GTC's members are OPC and the following 38 retail distribution cooperatives:
 1. Altamaha EMC
 2. Amicalola EMC
 3. Canoochee EMC
 4. Carroll EMC
 5. Central Georgia EMC
 6. Coastal Electric Cooperative
 7. Cobb EMC
 8. Colquitt EMC
 9. Coweta-Fayette EMC
 10. Diverse Power
 11. Excelsior EMC
 12. Flint Energies
 13. Grady EMC
 14. GreyStone Power Corporation
 15. Habersham EMC
 16. Hart EMC
 17. Irwin EMC
 18. Jackson EMC
 19. Jefferson Energy Cooperative
 20. Little Ocmulgee EMC
 21. Middle Georgia EMC
 22. Mitchell EMC
 23. Ocmulgee EMC
 24. Oconee EMC
 25. Okefenoke Rural EMC
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 30. Slash Pine EMC
 31. Snapping Shoals EMC
 32. Southern Rivers Energy
 33. Sumter EMC
 34. Three Notch EMC
 35. Tri-County EMC
 36. Upson EMC

37. Walton EMC
38. Washington EMC

5. That each of OPC's member cooperatives are themselves member-owned electric cooperatives.
6. That each of GTC's member cooperatives are themselves member-owned electric cooperatives.
7. That on an annual basis, OPC allocates its margin to its members as patronage capital.
8. That OPC is required to report annually to its members the patronage capital allocated to them.
9. That the patronage capital OPC allocates to its members is in turn allocated by its member distribution cooperatives to their respective members annually.
10. That OPC does not own the patronage capital allocated on its books to its members.
11. That patronage capital is entrusted to OPC by its membership.
12. That on an annual basis, GTC allocates its margin to its members as patronage capital.
13. That GTC is required to report annually to its members the patronage capital allocated to them.
14. That the patronage capital GTC allocates to its members is in turn allocated by its member distribution cooperatives to their respective members annually.
15. That GTC does not own the patronage capital allocated on its books to its members.
16. That patronage capital is entrusted to GTC by its membership.
17. That OPC is a non-exempt cooperative for purposes of federal income taxation.
18. That GTC is a non-exempt cooperative for purposes of federal income taxation.
19. That net margins allocated to members as patronage capital by non-exempt cooperatives are excluded from the cooperative's taxable income so long as certain conditions are met.

20. That net margins allocated by non-exempt cooperatives to their members as patronage capital are excluded from the cooperatives' taxable income only if the cooperatives are under a pre-existing legal obligation to pay those net margins to their members as patronage refunds.
21. That OPC's by-laws call for a First In-First Out ("FIFO") patronage capital retirement process. (Section VIII Sub 2).
22. That GTC's by-laws call for a First In-First Out ("FIFO") patronage capital retirement process.
23. That prior to 1992, OPC had in place a 13-year patronage capital retirement schedule.
24. That OPC's 1976 patronage capital allocations were retired in 1990 and paid in cash to OPC's members.
25. That OPC's 1977 patronage capital allocations were retired in 1991 and paid in cash to OPC's members.
26. That OPC's 1978 patronage capital allocations were retired in 1992 and paid in cash to OPC's members.
27. That in 1992, OPC, by action of its Board of Directors, extended from 13 years to 30 years the period that each year's net margins would be retained by OPC.
28. That under the 30-year retirement schedule adopted in 1992 no patronage capital would be returned to the members until 2010, at which time the 1979 patronage capital was to be returned.
29. That in 1997, OPC retired \$49 million in patronage capital allocations to OPC's members.
30. That OPC's 1997 \$49 million patronage capital retirement represented 14.572% of the patronage capital allocated for the years 1979-1995.
31. That since 1997, OPC has made no further retirements of patronage capital.
32. That GTC has never retired patronage capital.
33. That the decision whether to retire patronage capital allocated on OPC's books is the responsibility of the OPC Board of Directors.

34. That the decision whether to retire patronage capital allocated on GTC's books is the responsibility of the GTC Board of Directors.
35. That a majority of OPC's Board of Directors is comprised of managers or officers or directors of its member retail distribution cooperatives.
36. That a majority of GTC's Board of Directors is comprised of managers or officers or directors of its member retail distribution cooperatives.
37. That O.C.G.A. §46-3-340 obligates OPC and GTC to set rates that are at all times sufficient to:
- a) cover all administrative and operating expenses;
 - b) cover the costs of purchased capacity and energy;
 - c) cover the payments of the principal of and interest on your obligations; and
 - d) create and maintain reasonable reserves.
38. That OPC's revenue is determined by rates charged to its customers and the amount of their usage.
39. That GTC's revenue is determined by rates charged to its customers and the amount of their usage.
40. That rates charged by OPC are determined by its Board of Directors.
41. That rates charged by GTC are determined by its Board of Directors.
42. That the boards of directors of Georgia electric cooperatives can alter their rates at will without filing a rate case with, or obtaining approval from, the Georgia Public Service Commission.
43. That there must be positive margins at the end of a fiscal year in order for patronage capital to be allocated to members.
44. That in order for there to be positive margins at the end of a fiscal year, revenues must exceed expenses.
45. That if revenues are not sufficient to cover expenses, no patronage capital can be allocated.

46. That the ability to retire patronage capital is dependent on either (1) charging rates that are sufficient to generate net margins year after year until the cooperative's equity/asset ratio is high enough to satisfy lender requirements; or (2) obtaining lender consent for patronage capital retirements when the equity/asset ratio does not satisfy lender requirements.

47. That, in the absence of lender consent, the ability to retire patronage capital is dependent on charging rates that are sufficient to generate net margins year after year until the cooperative's equity/asset ratio is high enough to satisfy lender requirements.

48. That, once lender requirements for the equity/asset ratio have been satisfied, the ability to retire patronage capital is dependent on either (1) charging rates that are sufficient to generate the net margins and cash reserves required for patronage capital retirements or (2) borrowing money for patronage capital retirements.

49. That in the absence of borrowing, the ability to retire patronage capital is dependent on charging rates that are sufficient to generate the net margins and cash reserves required for patronage capital retirements.

50. That electric cooperatives can, and many do, budget for the rates, net margins and cash reserves required to retire patronage capital.

51. That unless additional funds can be borrowed, setting rates at levels lower than required to provide the margins and reserves required for the retirement of patronage capital ensures that the board of directors of the cooperative will not be able to retire patronage capital without impairing the financial condition of the cooperative.

52. That if an electric cooperative desires to accumulate funds for future capital needs or for the purpose of establishing and maintaining a reasonable capital structure, as permitted by O.C.G.A. § 46-3-340, it can do so by generating, allocating and retaining greater amounts of new patronage capital than the amounts of old patronage capital retired pursuant to its equity management plan.

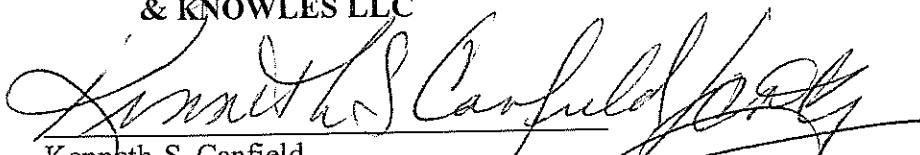
53. That accumulating new patronage capital and retiring old patronage capital at the same time requires that the cooperative's rates be set at a level that is high enough to generate the required net margins and cash reserves.

SIGNATURES BEGIN ON FOLLOWING PAGE

Walker, et al., v. Oglethorpe Power Corp, et al.
Superior Court of DeKalb County
Plaintiff's First Requests for Admissions to Defendants
Oglethorpe Power Corporation & Georgia Transmission Corporation


This the 10th day of March, 2014.

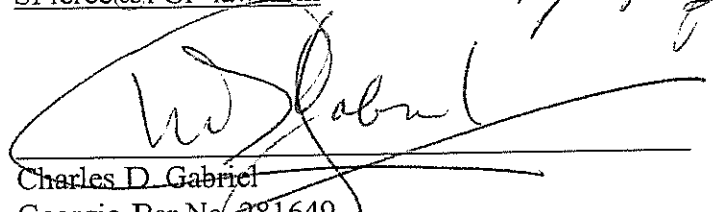
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**ATTORNEYS FOR PLAINTIFFS AND
PROPOSED CLASS**

FILED
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CLERK OF SUPERIOR COURT
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With Co-Counsel to be admitted *Pro Hac Vice*:

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Walker, et al., v. Oglethorpe Power Corp, et al.

Superior Court of DeKalb County

Plaintiff's First Requests for Admissions to Defendants

Oglethorpe Power Corporation & Georgia Transmission Corporation

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

Civil Action # 14 CV 2932-8

EDGAR "ED" WALKER

ET AL

Plaintiff

VS

OGLETHORPE POWER CORP

ET AL

Defendant

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

{ OGLETHORPE POWER CORP
GEORGIA TRANSMISSION CORP
WALTER ELLI
JACKSON ELLI
SHAWNEE ELLI

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

PERCE - GABRIEL PARTNERS, LLC
1095 OLD ROSWELL RD, STE E
ROSWELL, GA 30076
(678) 735-5900

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, or if service by publication within 60 days of judges order of publication, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 13th day of MARCH, 2014.

Debra DeBerry
Clerk of Superior Court

By: [Signature]
Deputy Clerk