

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS SOBIECH, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

U.S. GAS & ELECTRIC, INC., i/t/d/b/a
PENNSYLVANIA GAS & ELECTRIC;
ENERGY SERVICES PROVIDERS, INC.,
i/t/d/b/a PENNSYLVANIA GAS &
ELECTRIC; and PENNSYLVANIA
GAS & ELECTRIC,

Defendants.

No.: 2:14-CV-04464-GAM

CLASS ACTION

ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

Upon consideration of Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Settlement (the "Motion") filed by Thomas Sobiech, individually, on behalf of himself and all others similarly situated (collectively, "Settlement Class Plaintiff"),

The Court having jurisdiction over this action and the parties for purposes of settlement, and following review of the facts and circumstances of the proposed settlement;

IT IS HEREBY ORDERED THAT:

Preliminary Approval of the Settlement Agreement

1. The Court preliminarily approves the Settlement Agreement dated February 13, 2017 between Plaintiff and Defendants (the “Settlement Agreement”), subject to further consideration thereof at the Final Approval Hearing provided for below. The Settlement Agreement was entered into after extensive litigation and arms-length negotiations by experienced counsel for the parties. The Settlement Agreement calls for Defendants to provide benefits to Class Members that include a “Settlement Amount” totaling \$1,250,000 to be paid by Defendants. The Settlement Agreement also requires Defendants to pay the costs of notice and administration of the settlement, as well as up to \$475,000 for such attorneys’ fees, costs and expenses, and service awards as this Court may award. The Court finds that the terms embodied in the Settlement Agreement are sufficiently within the bounds of reasonableness so that notice of the settlement should be given as provided in this Order.

Preliminary Approval of the Settlement Class

2. The Court preliminarily finds that the proposed Settlement Class, for the purposes of settlement only, meets the requirements of Fed. R. Civ. P. 23(b)(3), 23(c)(1), and 23(c)(1)(B), and hereby conditionally certifies the following Settlement Class for settlement purposes only:

All persons in the Commonwealth of Pennsylvania who purchased electricity from Defendants at any time during the Class Period.

“Class Period” means any time up to and including the date of execution of the Settlement Agreement.

Excluded from the Settlement Class are: Defendants, any entities in which they have a controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such person’s immediate family and the presiding judge in this case and his immediate family, and any person who has previously released claims against the Defendants

including, but not limited to persons who released claims against the Defendants pursuant to the settlement of a related action before the Pennsylvania Public Utility Commission (PUC).

3. The Court preliminarily finds that Thomas Sobiech is an adequate representative of the Settlement Class for settlement purposes only.

4. If the Settlement Agreement is terminated or is not consummated for any reason, the certification of the Settlement Class shall be void, and Plaintiff and Defendants shall be deemed to have reserved all their rights to propose or oppose all certification issues.

5. The Court preliminarily approves the settlement benefits as described in the Settlement Agreement. Defendants will also pay the costs of notice and administration, and any attorneys' fees, litigation expenses, and service awards approved by the Court, under the terms and conditions specified in the Settlement Agreement.

Approval of Notice Plan and Schedule

6. The Court has reviewed and hereby approves the Notice Plan prepared by Epiq Class Action & Claims Solutions, Inc. (the "Notice Plan"), attached as Exhibit "A-5" to the Memorandum of law in Support of Preliminary Approval. The Court finds the notice to be provided to the Settlement Class as set forth in the Notice Plan to be the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, and due process.

The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator. Responsibilities of the Settlement Administrator include the following: (a) creating and maintaining a database of names and addresses of class members; (b) comparing that

database with a national change of address database; (c) emailing or printing and mailing notices, each with an assigned unique claim number; (d) compiling email and mailing address information for and re-sending any notices returned as undeliverable; (e) developing and maintaining a webpage for the purposes of notice and Claim Form administration; (f) providing a blank Claim Form by mail to any Class Members who request one; (g) compiling a list of Class Members who submit properly completed Claim Forms, either by mail or via the website, and verifying the accuracy and completeness of the Claim Forms; (h) distributing the proper share of the Settlement Amount by check to those Class Members who file a claim, on or before the Claim Deadline.

7. The Court hereby orders the Settlement Administrator to implement the notice events identified in the Motion and Notice Plan, using the forms attached as Exhibits to the Memorandum of law in support of Preliminary Approval, pursuant to the following schedule:

EVENT

DATE

Notice Plan to Begin

No later than July 24, 2017

Post-Notice Declaration of Settlement Administrator Attesting to its Compliance with the Notice Plan to be Filed with the Court

No later than October 9, 2017

Objections to the Settlement

8. Any member of the Settlement Class who objects to the Settlement Agreement shall file a written objection with the Court, with a written copy served on Class Counsel and Defendants' counsel, pursuant to the schedule below.

EVENT

DATE

*Deadline to File, Postmark, and
Send Objections*

No later than October 9, 2017

9. The written objection must comply with the following requirements:
- (a) Objections must include: (i) the objector's name, address, and telephone number; (ii) the name of this Action and the case number; (iii) a statement of each objection; (iv) sufficient written proof that the objector is a current or former customer of Defendants; and (v) a written brief detailing the specific basis for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection.
 - (b) The objector must include with the objection a signed and sworn statement verifying under penalty of perjury that the objector believes in good faith that he or she is a member of the Settlement Class and provide all information required by the Claim Form.
 - (c) Any class member who files an objection must agree to make themselves available for a deposition by Class Counsel and Defendants' counsel between the time the objection is filed and a date no later than five (5) days before the Final Fairness Hearing and the objection must include the dates when and locations where the objecting class member will be available to be deposed.
 - (d) If the objection is made through an attorney, the written objection must provide the attorney's name, address, email address, and telephone number and also include: (i) the identity and number of the Settlement Class Members represented by objector's attorney; (ii) the

number of such represented Settlement Class Members who have opted out of the Settlement Class; and (iii) the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and Defendants' counsel not later than twenty (20) days before the Final Fairness Hearing or as the Court may otherwise direct a document containing the following: (i) a description of the attorney's legal background and prior experience in connection with class action litigation, including the previous cases in which the attorney has represented an objector to a class action settlement; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate.

(e) Counsel for the Parties shall file any responses to the objections submitted by objecting Settlement Class Members at least ten (10) days before the date of the Final Fairness Hearing.

Requests to be Excluded from the Settlement

10. Any member of the Settlement Class who wishes to be excluded from the Settlement Class shall mail written notice of exclusion to the Settlement Administrator, pursuant to the schedule below:

EVENT

DATE

*Deadline to File, Postmark, and
Send Exclusions*

No later than October 9,
2017

11. Any notice of exclusion shall include the following from the member of the Settlement Class seeking to be excluded: (a) name, (b) address, (c) property address (if different), (d) telephone number, (e) a statement that the person wishes to be excluded from the settlement, and (f) the authorized signature of the person who wishes to be excluded from the settlement.

12. Any member of the Settlement Class who submits a timely request for exclusion that complies with the requirement set forth in this Order shall not be bound by the Settlement, Settlement Agreement, or Final Order and Judgment. Upon receipt, the Settlement Administrator shall promptly provide copies of each notice of exclusion to Class Counsel and Defendants' counsel.

13. Any member of the Settlement Class who does not properly and timely mail a notice of exclusion as set forth herein shall be included in the Settlement Class and shall be bound by the terms of the Settlement, Settlement Agreement, and Final Order and Judgment, whether or not such member of the Settlement Class shall have otherwise objected to the settlement or sought exclusion, and whether or not such member submits a claim or participates in the settlement.

14. Any member of the Settlement Class who submits a notice of exclusion that complies with the requirements of this Order and also objects to the settlement shall be deemed to have excluded himself or herself from the Settlement Class and his or her objections shall not be considered by the Court.

Filing and Administration of Claim Forms

15. To effectuate the settlement and the provisions of the Notice Plan, the Settlement Administrator shall be responsible for the receipt of all notices of exclusion and claim forms. The

Settlement Administrator shall preserve (on paper or transferred into electronic format) all notices of exclusion, claim forms, and any and all other written communications from members of the Settlement Class in response to the notices for a period of three (3) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Class Counsel and Defendants' counsel, until benefits are mailed to each Settlement Class Member entitled to receive them pursuant to the terms and conditions of the Settlement Agreement.

16. To participate in the settlement, each member of the Settlement Class shall take the following actions and be subject to the following requirements:

- a) Fill out, sign, and submit a Claim Form to the Claims Administrator.
- b) Comply with all applicable deadlines stated in this Order and the Settlement Agreement.

17. Any member of the Settlement Class who wishes to submit a Claim Form shall do so in accordance with the procedures set forth in this order under the following schedule:

<u>EVENT</u>	<u>DATE</u>
<i>Deadline to Postmark and Send Claim Form</i>	<u>No later than December 7, 2017</u>

18. Any information received by the Claims Administrator in connection with this Settlement that pertains to a particular member of the Settlement Class, or information submitted in conjunction with a notice of exclusion (other than the identity of the person or entity requesting exclusion), shall not be disclosed to any other person or entity other than Class Counsel, Defendants' counsel, and the Court, or as otherwise provided in the Settlement Agreement.

Final Fairness Hearing

19. A hearing on final settlement approval (the “Final Fairness Hearing”) will be held before this Court, at United States Courthouse, 601 Market Street, Court Room 9-B, Philadelphia, PA 19106, at time on the date set forth below, to consider matters relating to the settlement, including the following: (a) whether the Settlement Class should be finally certified, for settlement purposes only; (b) the fairness, reasonableness and adequacy of the settlement, the terms of the Settlement Agreement, the dismissal with prejudice of the Litigation as to Defendants, and the entry of final judgment; and (c) whether Class Counsel’s application for attorneys’ fees, expenses, and incentive awards for the Settlement Class Representatives (the “Fee Petition”), and their fees and other costs should be granted.

20. The Court orders Class Counsel to file with the Court any memoranda or other materials in support of final approval of the Settlement and any Fee Petition pursuant to the schedule set forth below.

21. Any member of the Settlement Class that has not filed a notice of exclusion in the manner set forth above may appear at the Final Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the proposed settlement or the other matters to be considered. However, no person will be heard, and no papers, briefs or other submissions will be considered by the Court, unless such person has filed with the Court and served upon Class Counsel and Defendants’ counsel a Notice of Intent to Appear pursuant to the schedule set forth below. The Notice of Intent to Appear must (a) state how much time the member of the Settlement Class anticipates needing to present the objection; (b) identify, by name, address, telephone number all witnesses the Class Member proposes to have testify; (c) summarize the

anticipated testimony of all such witnesses; (d) identify all papers, exhibits, or other submissions the Class Member intends to offer; and (e) attach complete copies of all such papers, exhibits, and submissions.

22. Any Settlement Class member may retain an attorney at his or her own expense to appear in the action. Such attorney shall file with the Court and serve a Notice of Appearance on Class Counsel and Defendant’s counsel pursuant to the schedule set forth below.

23. The date and time of the Final Fairness Hearing and related filings as identified herein shall be as follows:

<u>EVENT</u>	<u>DATE</u>
<i>Deadline for Notices of Intent to Appear</i>	<u>September 7, 2017</u>
<i>Motion for Attorneys’ Fees and Expenses, and Service Awards to be Filed by Class Counsel Due</i>	<u>September 18, 2017</u>
<i>Motion for Final Approval Due</i>	<u>October 12, 2017</u>
<i>Final Fairness Hearing to be Held</i>	<u>October 23, 2017</u>

24. The date and time of the Final Fairness Hearing shall be set forth in the notice to be disseminated pursuant to this order and Summary Notice, but shall be subject to adjournment by the Court without further notice other than that which may be posted at the Court, on the Court’s website, and/or the website to be established pursuant to the Notice Plan.

25. Upon Final Approval, every term and provision of the Settlement Agreement (except as may be modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth therein and shall have the full force and effect of an Order of the Court.

Service of Objections, Notices of Intent to Appear and Other Documents

26. When this Order directs that papers, briefs, objections, notices and other documents be served upon Class Counsel and Defendants' counsel, service shall be made to the attorneys listed below by United States Mail, first class, addressed as follows:

Class Counsel

Jonathan Shub, Esquire
Kohn Swift & Graf, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107

Troy M. Frederick, Esquire
Marcus & Mack, P.C.
57 South Sixth Street
Indiana, PA 15701

Counsel for Defendants

Grant S. Palmer
Charles A. Fitzpatrick, IV
Blank Rome LLP
One Logan Square
13 N. 18th Street
Philadelphia, PA 19103

Status of Litigation and Settlement

27. All discovery and other pretrial proceedings in this action are stayed and suspended, pending the Effective Date of the Class Settlement ("Final Approval"), except for such proceedings as are provided for in the Settlement Agreement, or which may be necessary to implement the terms of the settlement, Settlement Agreement, or this Order. Pending Final Approval, no Class member, either directly, representatively, or in any other capacity (other than a Class member who validly and timely elects to be excluded from the Class), shall commence, continue or prosecute against any or all Released Parties any action or proceeding in any court or

tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement Agreement, and are hereby enjoined from so proceeding.

28. Upon Final Approval, all Settlement Class members who do not file a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement Agreement, and any such Settlement Class Member shall be deemed to have forever released the Released Parties from any and all such matters, claims and causes of action as provided for in the Settlement Agreement.

29. In the event the Settlement is terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Settlement Class Plaintiff or the Defendants.

30. Neither this Order nor the Settlement Agreement shall constitute any evidence or admission of liability by any Defendant, or an admission regarding the propriety of any certification of any particular class for purposes of litigation, nor shall they be offered into evidence in this or any other proceeding except to consummate or enforce the Settlement Agreement or the terms of this Order, or by any Released Party in connection with any action asserting Released Claims.

SO ORDERED, this 7th day of June, 2017.

/s/ Gerald Austin McHugh
U.S. DISTRICT JUDGE