

DOCKET NO. X03 HHD-CV14-6055537-S	:	SUPERIOR COURT OF CONNECTICUT
	:	
HOLLY CHANDLER AND	:	COMPLEX LITIGATION DOCKET
DEVON ANN CONOVER,	:	
	:	JUDICIAL DISTRICT OF HARTFORD
	:	
PLAINTIFFS,	:	AT HARTFORD
	:	
V.	:	
	:	
DISCOUNT POWER, INC.,	:	
	:	
DEFENDANT.	:	NOVEMBER 21, 2016

**ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF
NOTICE PLAN, AND SCHEDULING OF FAIRNESS HEARING**

This matter comes before the Court on the Unopposed Corrected Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, Approval of Notice Plan and Scheduling of Fairness Hearing (#131.00) filed by Holly Chandler and Devon Ann Conover, individually and on behalf of the Settlement Class (as defined below), by and through Robert Izard and Seth Klein of Izard Kindall & Raabe LLP, requesting that the Court enter an Order: (1) preliminarily approving the Settlement Agreement, which was filed with the Court on November 18, 2016; (2) preliminarily approving the proposed Plan of Allocation; (3) preliminarily certifying, pursuant to Connecticut Practice Book §§ 9-7 through 9-9, the Settlement Class for settlement purposes only; (4) preliminarily appointing Holly Chandler and Devon Ann Conover as the Representative Plaintiffs; (5) appointing Robert Izard and Seth Klein of Izard Kindall & Raabe LLP as Settlement Class Counsel; (6) approving the Notice Plan; (7) appointing Kurtzman Carson Consultants LLC (“KCC”) as the Notice and Claims Administrator; and (8) scheduling a Final Fairness Hearing to consider final approval of the settlement.

Having reviewed and considered the Settlement Agreement and the motion and supporting memorandum for preliminary approval of the settlement, the Court makes the findings and grants the relief set forth below, preliminarily approving the settlement contained in the Settlement Agreement upon the terms and conditions set forth in this Order. Terms and phrases in this Order shall have the same meaning as defined in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Having made the findings set forth below, the Court hereby preliminarily certifies a plaintiff class, for settlement purposes only, in accordance with the terms of the Settlement Agreement (the "Settlement Class"). The Settlement Class is defined as:

All individual residential and small business consumers enrolled (either initially or through "rolling over" from a fixed rate plan) in a Discount Power variable rate electric plan in connection with a property located within Connecticut at any time from June 1, 2013, through and including July 31, 2016.

Excluded from the Class are Discount Power, the officers, directors and employees of Discount Power; any entity in which Discount Power has a controlling interest; any affiliate or legal representative of Discount Power; the judge to whom this case is assigned and any member of the judge's immediate family; any heirs, assigns and successors of any of the above persons or organizations in their capacity as such; and anyone who timely submits a valid request to be excluded from the Settlement Class.

As provided for in the Settlement Agreement, if the Court does not grant final approval of the settlement set forth in the Settlement Agreement, or if the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue.

2. The Settlement Class is so numerous that joinder of all members is impracticable.

3. The Court finds, based on the terms of the settlement described in the Settlement

Agreement, that:

- a. There are questions of law and fact common to the Settlement Class;
 - b. The claims of Representative Plaintiffs are typical of the claims of members of the Settlement Class;
 - c. Representative Plaintiffs and Settlement Class Counsel will fairly and adequately represent the interests of the Settlement Class. There are no conflicts of interest between Representative Plaintiffs and members of the Settlement Class;
 - d. Questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual members of the Settlement Class; and
 - e. Certification of the Settlement Class is superior to other methods for the fair and efficient adjudication of this controversy.
4. Accordingly, the Court hereby preliminarily certifies the Settlement Class, for settlement purposes only, pursuant to Connecticut Practice Book § 9-9.
5. The Court preliminarily approves the settlement set forth in the Settlement Agreement as being within the range of fair, reasonable, and adequate, within the meaning of Connecticut Practice Book § 9-9, subject to final consideration at the Final Fairness Hearing provided for below.
6. The Court preliminarily approves the Plan of Allocation described in the Motion for Preliminary Approval as being fair and reasonable, subject to final consideration at the Final Fairness Hearing provided for below.
7. The Court appoints Robert A. IZARD and Seth R. Klein of IZARD KINDALL & RAABE LLP as counsel for the Settlement Class (“Settlement Class Counsel”).
8. Holly Chandler and Devon Ann Conover are appointed as Representative Plaintiffs.
9. A hearing (the “Final Fairness Hearing”) shall be held before this Court on March 27, 2017, at 10:00 a.m., at the Connecticut Superior Court, Judicial District of Hartford, Courtroom 400, 95 Washington Street, Hartford, Connecticut 06106 to determine: (a) whether

the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class; (b) whether a Judgment, as provided for in the Settlement Agreement, should be entered granting final approval of the settlement; and (c) whether, and in what amount, attorneys' fees, costs, and expenses, and Representative Plaintiffs' incentive awards should be paid to Settlement Class Counsel for distribution. The Court may adjourn and/or continue the Final Fairness Hearing without further notice to Settlement Class Members.

10. The Court approves, as to form and content, the Notice Plan, with the following exceptions to the notice attached as Exhibit A to the Settlement Agreement (and attached as Exhibit D to the Carameros Affidavit), which must be corrected prior to notice being sent or posted:

- a. On page 1, the statement "A federal court authorized this Notice" must be changed to "A state court authorized this Notice."
- b. In the answer to Question 17 regarding a motion for attorneys' fees, the stated percentage cap must be consistent with that agreed to in the Settlement Agreement. The notice identifies the cap as 25%, whereas ¶ 40 of the Settlement Agreement references "one-third" of the Settlement Fund.

11. The Court approves and appoints KCC as Notice and Claims Administrator and payment of Notice Costs out of the Settlement Fund.

12. As soon as is possible, and in any event no later than January 11, 2017, notice shall be given to the Class consistent with the Notice Plan and the Settlement Agreement.

13. The Court finds that compliance with the Notice Plan is the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Connecticut Practice Book § 9-9, applicable law, and due process.

14. Prior to the Final Fairness Hearing, the Settling Parties shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with the Notice Plan.

15. No later than February 1, 2017, Representative Plaintiffs shall file any motion for attorneys' fees, costs and expenses, as well as any motion for an award of an incentive payment.

16. To be excluded from the Settlement, a Settlement Class Member must individually sign and timely submit written notice clearly manifesting his or her intent to a designated Post Office Box established for said purpose. The written notice must refer to *Chandler v. Discount Power* and must list the CL&P, Eversource or UI account number for the account sought to be excluded.

In addition, the exclusion request must include, for each account listed:

- (1) The full names and current addresses of each person whose name is on the account.
- (2) A statement that each person whose name is on the account satisfies the criteria to be a Settlement Class Member.
- (3) A statement of intention to exclude each person whose name is on the account from the Settlement Class.
- (4) The signature of each person whose name is on the account.

17. All requests for exclusion must be postmarked no later than February 27, 2017.

18. All persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of the Settlement Agreement, the Judgment Order entered thereon, and all Orders entered by the Court in connection with the settlement set forth in the Settlement Agreement. All persons who submit valid and timely notice of their intent to be excluded from the Settlement Class shall neither receive any benefits nor be bound by the terms of the Settlement Agreement.

19. Settlement Class Members who qualify for and wish to submit a claim for any benefit under the settlement as to which a claim is required shall do so in accordance with the requirements and procedures of the Settlement Agreement and Notice. All Settlement Class Members who qualify for any benefit under the settlement as to which a claim is required but fail

to submit a claim therefor in accordance with the requirements and procedures of the Settlement Agreement shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions of the Settlement Agreement, and the releases contained therein.

20. To object to the settlement, the Plan of Allocation, or to the motions for attorneys' fees, costs and expenses, or for an incentive award, a Settlement Class Member must timely file a written statement of objection with the Court. The written statement of objection must set forth:

- (1) the full name, address, and telephone number of the objector;
- (2) all reasons for the objection;
- (3) the names of all attorneys representing the objector, if any;
- (4) the names of all attorneys representing the objector who will appear at the Final Fairness Hearing;
- (5) a list of all people the objector will call to testify at the Final Fairness Hearing, if any;
- (6) a statement stating whether the objector will appear and/or testify at the Final Fairness Hearing; and
- (7) the signature of the objector or the signature of a duly authorized attorney or other duly authorized representative for the objector (along with documentation of such representation).

21. To be timely, a written statement of an objection in appropriate form must be filed with the Clerk of the Superior Court of the Hartford Judicial District no later than February 27, 2017, and also served on Settlement Class Counsel, Seth Klein, IZARD KINDALL & RAABE LLP, 29 South Main St., Suite 305, West Hartford, Connecticut 06107, and Defendant's counsel, James T. Shearin, Pullman & Comley LLC, 850 Main St., P.O. Box 7006, Bridgeport, Connecticut 06601.

22. All discovery and pretrial proceedings in this litigation are stayed and suspended until further order of the Court.

23. Pending the final determination of the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, no Settlement Class Member, either directly, representatively, or in any other capacity, shall institute, commence, or prosecute any of the Released Claims in any action or proceeding in any court or tribunal.

24. Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (a) is or may be deemed to be, or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of Defendant; or (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of Defendant, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

25. In the event the Court does not grant final approval of the Settlement Agreement or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, the Settling Parties shall be restored to their respective positions in the litigation, except that all scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any Settling Party. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

26. The Court sets the following schedule for the final approval hearing and the actions that must precede it:

- a. Initial notice shall be mailed to the Settlement Class by no later than January 11, 2017.

- b. Representative Plaintiffs shall file their Motion for Final Approval, Motion for Attorney's Fees, Costs and Expenses, and Motion for Incentive Award by no later than February 1, 2017.
- c. Settlement Class members must file any objections to the Motion for Final Approval, the Motion for Attorneys' Fees, Costs and Expenses, and/or the Motion for Incentive Award by no later than February 27, 2017.
- d. All requests for exclusion from the Settlement must be postmarked no later than February 27, 2017.
- e. The deadline to file claims is March 10, 2017.
- f. Reply briefs may be filed in response to any objections by no later than March 13, 2017.
- g. The Final Fairness Hearing will take place on March 27, 2017, at 10:00 a.m., at the Connecticut Superior Court, Judicial District of Hartford, Courtroom 400, 95 Washington Street, Hartford, Connecticut 06106.

SO ORDERED.



Ingrid L. Moll, J.

Dated: November 21, 2016