

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGELA WISE and GIDEON ROMM, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ENERGY PLUS HOLDINGS LLC,

Defendant.

Civil Action No. 11-7345-WHP

~~Proposed~~ **FINAL APPROVAL ORDER**

This matter having come before the Court for a Final Approval Hearing on July 16, 2013, pursuant to the Preliminary Approval Order of this Court dated March 26, 2013, on the application of Plaintiffs and Class Representatives for final approval of the Settlement Agreement executed on or about February 28, 2013, the best practicable notice in the circumstances having been given to the Settlement Class as required by the Preliminary Approval Order, the Settlement Class members having been afforded an adequate opportunity to exclude themselves from the Settlement or to object thereto, and the Court having considered all papers filed, oral arguments presented, and proceedings had herein, and otherwise being fully informed in the premises as to the facts and the law,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. This Final Approval Order incorporates by reference the definitions set forth in the Settlement Agreement, and all capitalized terms herein shall have the same meanings as set forth in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action, and over

Energy Plus and all members of the Settlement Class.

3. As set forth in the Court's Preliminary Approval Order, the Court reaffirms its order of March 26, 2013, certifying the Settlement Class pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), and finally certifies the Settlement Class defined as:

All persons who were customers of Energy Plus Holdings LLC or Energy Plus Natural Gas LLC in New York, Maryland, Connecticut, New Jersey, Pennsylvania, Texas, Illinois, Ohio, or Massachusetts, at any time up to and including October 15, 2012.

4. The Court appoints Angela Wise and Gideon Romm as Class Representatives and the law firm of Meiselman, Packman, Nealon, Scialabba & Baker P.C. as Class Counsel, and finally appoints them to such positions.

5. Notice of the proposed Settlement was given to all Settlement Class members by the best means practicable under the circumstances, including direct U.S. Mail to more than 400,000 Settlement Class members and publication of the notice on the internet at <http://www.energysettlement.com>. The form and method of notifying the Settlement Class of the pendency of the Action and all terms of the proposed Settlement met the requirements of the Preliminary Approval Order, Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law and no Class member has objected thereto.

6. The Settlement Agreement was negotiated at arm's length, in good faith, by highly capable and experienced counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Action, and with the active involvement of the Parties. The Settlement Agreement is entitled to a presumption of procedural fairness, and was entered into as the result of a process that was in fact procedurally fair.

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- (c) The Class Notice expressly advised the Settlement Class members that Class Counsel would apply for an award of attorneys' fees, costs, and expenses in an amount not to exceed \$3,300,000, to be paid by Energy Plus. There were zero objections concerning the requested award of attorneys' fees, costs, and expenses;
 - (f) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;
 - (g) The action involves complex legal and factual issues and was actively prosecuted for more than a year before settlement negotiations began. But for the Settlement, the litigation would involve further lengthy proceedings, at considerable risk to the Settlement Class, and with uncertain resolution of the legal and factual issues;
 - (h) Had Class Counsel not achieved the Settlement, there would remain a significant risk that the Class Representative and the Settlement Class may have recovered less or nothing from Energy Plus;
 - (i) The requested award of attorneys' fees represents between 23% and 26.5% of the value of the Settlement. The Court finds that the requested award of attorneys fees, costs, and expenses is reasonable when viewed as percentage of the common fund, taking all relevant factors into account;
 - (j) Class Counsel and counsel in the other Energy Plus Lawsuits have devoted more than 2,600 hours to litigating the Action and achieving the Settlement, with a lodestar value of \$1,544,892.70. Class Counsel has already factored potential inefficiencies into the lodestar, cutting more than 150 hours of time for which lawyers and support staff actually billed. This involved writing off the time of lawyers and support staff that billed less than 20 hours to the Energy Plus Lawsuits. The Court finds that the resulting multiplier of 2.1 is reasonable in the circumstances of this case, taking all relevant factors into account;
 - (k) The requested award of attorney's fees, costs, and expenses is fair, reasonable, and consistent with awards in similar cases.

12. The Court has considered the requests for Incentive Awards for the Class Representatives. The Court finds the requested Incentive Awards to be justified under the facts of this case and the applicable legal authorities, and notes with approval that the requested Incentive Awards will be paid by Energy Plus and thus will not diminish or erode the benefit to the Settlement Class. Accordingly, the Court hereby approves the Incentive Awards of \$4,000

for Plaintiffs Angela Wise and Gideon Romm and \$2,000 for the remaining named plaintiffs in the Energy Plus Lawsuits.

13. The Court has considered all objections filed on behalf of Settlement Class members, including improperly filed objections, which amounted to only .0005% of the Class. The Court has also considered the comments by *amicus curiae* State Attorneys General. The Court finds that all of the objections lack merit, and they are hereby overruled.

14. The Court hereby dismisses the Action in its entirety, with prejudice, and without costs except as otherwise provided in the Settlement Agreement and expressly stated in this Final Approval Order or additional Order of this Court.

15. Pursuant to the Settlement Agreement, the plaintiffs in the other Energy Plus Lawsuits Parties shall execute and file a notice of dismissal or an agreement or stipulation requesting the dismissal with prejudice of the other Energy Plus Lawsuits, to become effective when the Settlement becomes Final and Conclusive.

16. As of the Effective Date of the Settlement Agreement, the releases set forth in the Settlement Agreement shall take effect, subject to the terms thereof.

17. Notwithstanding the entry of Judgment, this Court shall retain exclusive and continuing jurisdiction and exclusive venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Settlement.

18. If the Judgment of this Court does not become Final and Conclusive, this Final Approval Order shall be rendered null and void, and shall be vacated *nunc pro tunc*.

19. The Parties are hereby authorized, without requiring further approval from the Court, to agree to and adopt amendments and modifications to the Settlement Agreement, in

writing and signed by the Parties, that are not inconsistent with this Final Approval Order and that do not limit the rights of the members of the Settlement Class.

IT IS SO ORDERED this 17th day of September, 2013.



Honorable William H. Pauley III
United States District Judge