

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

KEITH L. DAVIDSON,)
)
 Plaintiff,)
) No. 04 CH 4989
 v.)
) The Honorable Martin S. Agran
PEOPLES ENERGY SERVICES)
CORPORATION,)
)
 Defendant.)

STIPULATION OF SETTLEMENT

This action has been brought by Plaintiff Keith L. Davidson on his own behalf and on behalf of the following Class: all persons who enrolled and participated in PE Services' \$0.62 per therm fixed price program (the "Class").

Defendant Peoples Energy Services Corporation ("PE Services") is an alternative gas supplier certified by the Illinois Commerce Commission under the Public Utilities Act (220 ILCS 5/1-101, *et seq.*) to provide service to customers in the service territories of the following utilities: Northern Illinois Gas Company, North Shore Gas Company, and Peoples Gas Light and Coke Company.

On March 22, 2004, Plaintiff filed his Class Action Complaint ("Complaint") and Motion for Class Certification in the Circuit Court of Cook County, Chancery Division, the Honorable Martin S. Agran ("Court") presiding, Case. No. 04 CH 4989. The Complaint alleges that PE Services' Fall 2003 offer to customers to lock into a fixed price program of \$0.62 per therm for gas violated the Illinois Consumer Fraud Act ("Act") (815 ILCS 505/1, *et seq.*), because PE Services allegedly did not adequately disclose certain alleged "Storage Charges" associated with the \$0.62 per therm fixed price program.

PE Services filed a Motion To Dismiss under 735 ILCS 5/2-619(a)(1) and (a)(9) on the basis that the Court lacked jurisdiction over the matter and that the alleged transactions did not fall within the scope of the Act. The Court denied PE Services' Motion To Dismiss.

PE Services subsequently filed its Answer to the Complaint and Affirmative Defenses, *i.e.*, Voluntary Payment, Lack of Jurisdiction, and Failure to State a Claim Upon Which Relief May Be Granted.

The parties engaged in written and oral discovery and briefed the issue of class certification.

PE Services filed Additional Affirmative Defenses, *i.e.*, Failure to State a Claim Upon Which Relief May Be Granted (No Deception), Failure to State a Claim Upon Which Relief May Be Granted (No Proximate Cause), and Barred By Other Affirmative Matter (Exempt Under 815 ILCS 505/10b) and thereafter moved for judgment on the pleadings.

On February 9, 2006, the Court denied PE Services' Motion for Judgment on the Pleadings and granted Plaintiff's Motion for Class Certification. The Court limited the Class to those customers who enrolled and participated in PE Services' \$0.62 per therm fixed price program.

Plaintiff, on behalf of himself and the Class, desires to settle all claims alleged and arising out of the allegations in the Complaint upon the terms and conditions hereinafter set forth, and he deems such settlement in the best interests of the Class.

PE Services, while denying all charges alleged and arising out of the allegations in the Complaint and disclaiming any liability thereunder, considers it desirable to settle all such claims upon the terms and conditions hereinafter set forth in order to avoid further expense and inconvenience from the litigation.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. In full and final settlement and discharge of this action and of all claims against PE Services and its parent or subsidiary companies, partners, divisions, and affiliates of any kind, past or present, and each of its officers, directors, agents, employees, attorneys, or any persons acting on their behalf, which are alleged in the Complaint or could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Complaint, PE Services agrees to pay: (1) the sum of \$325,000.00 ("Settlement Fund"), inclusive of any payments of attorneys' fees and expenses to the attorneys for the Class allowed by the Court as set forth in paragraph five herein and inclusive of any incentive award to Plaintiff allowed by the Court as set forth in paragraph five herein; and (2) the cost of administering notice and settlement proceeds to the Class by the Claims Administrator designated by PE Services.

2. Without limiting the generality of the foregoing, the Class agrees never to initiate, institute, or file any complaint, claim, charge, claim for relief, demand, suit, action, or cause of action, whether in law or in equity, which they assert or could assert at common law or under any statute, rule, regulation, order, or law, whether federal, state or local, on any ground whatsoever against PE Services and its parent or subsidiary companies, partners, divisions, and affiliates of any kind, past or present, and each of its officers, directors, agents, employees, attorneys, or any persons acting on their behalf with respect to any event, matter, claim, occurrence, damage, or injury arising out of or associated with the allegations in the Complaint.

3. The Claims Administrator designated by PE Services will distribute the balance of the Settlement Fund to the Class in proportion to the amount of alleged Storage Charges that the Class member paid while enrolled in PE Services' \$0.62 per term fixed price program. Any unclaimed or undeliverable settlement proceeds to the Class will be distributed to the "Share the Warmth Fund," which is administered by the Salvation Army. Subject to the Protective Order entered in this case and Class Counsel's agreement that the information will be for attorneys' eyes only and used only for purposes of this Stipulation of Settlement, the Claims Administrator will provide to Class Counsel and this Court a schedule of the amount to be distributed to each Class Member within thirty days following preliminary approval of this Stipulation of Settlement (assuming preliminary approval is obtained).

4. The Claims Administrator designated by PE Services will cause to be mailed to the Class the Notice To Class Members Of Proposed Class Action Settlement And Fairness Hearing (attached as Exhibit A) within thirty days following preliminary approval of this Stipulation of Settlement (assuming preliminary approval is obtained). The Claims Administrator shall be required to resend via mail only such notices that are returned and annotated with an adequate forwarding address within twenty days of the mailing of the Class Notice. The Claims Administrator designated by PE Services will distribute the settlement proceeds to the Class within ninety days of the Effective Date set forth in paragraph seven hereof.

5. If the court enters final judgment as provided in paragraph six hereof, the attorneys for the Class will file a petition with the Court for an award of attorneys' fees and reimbursement of expenses. PE Services will not object to a request for an award of attorneys' fees not exceeding the sum of \$97,500.00, *i.e.*, 30% of the \$325,000.00 Settlement Fund, and will not object to a request for an award of expenses not exceeding the sum of \$5,000.00. In addition, Plaintiff will file a petition with the Court for an incentive fee award for his efforts in representing the Class, and PE Services will not object to a request for an incentive fee award for Plaintiff not exceeding the sum of \$5,000.00. Any such payments of attorneys' fees and expenses and incentive fee award allowed by the Court shall be borne by PE Services, subject to the limitation set forth in paragraph one hereof that such payments of attorneys' fees and expenses and incentive fee award will be deducted from the Settlement Fund, and such payments shall be made within ninety days of the Effective Date designated in paragraph seven hereof.

6. If the Court approves the settlement set forth in this Stipulation of Settlement, the parties will recommend to the Court that the Court enter final judgment:

(a) Approving the settlement set forth in this Stipulation of Settlement as fair, reasonable, and adequate and directing its consummation in accordance with the terms of this Stipulation of Settlement;

(b) Dismissing this action on the merits with prejudice and barring and permanently enjoining the Class and their respective heirs, legatees, devisees, personal and legal representatives, successors, and assigns from initiating, instituting, or filing any

complaint, claim, charge, claim for relief, demand, suit, action, or cause of action, whether in law or in equity, which they assert or could assert at common law or under any statute, rule, regulation, order or law, whether federal, state or local, on any ground whatsoever against PE Services and its parent or subsidiary companies, partners, divisions, and affiliates of any kind, past or present, and each of its officers, directors, agents, employees, attorneys, or any persons acting on their behalf with respect to any event, matter, claim, occurrence, damage, or injury arising out of or associated with the allegations in the Complaint;

(c) Reserving jurisdiction to enforce the terms of the Stipulation of Settlement and to supervise the consummation of this settlement and the award to the Class and their Counsel of reasonable attorneys' fees not to exceed \$97,500.00, *i.e.*, 30% of the \$325,000.00 Settlement Fund, and of reimbursement of expenses not to exceed \$5,000.00 in such amount or amounts as the Court may direct, payable from PE Services subject to the limitation set forth in paragraph one hereof that such payments of attorneys' fees and expenses and incentive fee award will be deducted from the Settlement Fund.

7. The Effective Date shall be the later of:

(a) The date of the expiration of the time to appeal, without an appeal having been taken, from the final judgment referred to in paragraph six hereof; or

(b) If an appeal shall be taken from such final judgment, the date upon which all appeals (including petitions for certiorari, leave to appeal, or rehearing) and any proceedings resulting therefrom have been finally disposed of in such manner as to permit this Stipulation of Settlement to be consummated without change.

8. PE Services will designate a Claims Administrator and pay the cost of administering notice and settlement proceeds to the Class.

9. If this Stipulation of Settlement shall be disapproved by the Court or if it shall not be consummated for any reason whatever, then and in any of these events this Stipulation of Settlement shall have no force and effect, and it and all negotiations and proceedings connected therewith shall be without prejudice to the rights of any party and shall not be used in any subsequent proceeding in any of these actions or in any other action or proceedings.

10. Neither this Stipulation of Settlement nor any negotiations or proceedings connected therewith shall be construed, offered, received as, or deemed to be evidence of an admission on the part of the Class of lack of merit or on the part of PE Services of any liability or wrongdoing whatever, whether as alleged in the Complaint or otherwise. PE Services specifically disclaims any wrongdoing and any liability under the Complaint herein or otherwise and is entering into this Stipulation of Settlement solely for the reasons set forth above.

11. The attorneys for the parties hereto shall submit this Stipulation of Settlement to the Court within seven days following its execution.

12. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Class and their respective heirs, legatees, devisees, personal and legal representatives, successors, and assigns and to the benefit of PE Services and its parent or subsidiary companies, partners, divisions, and affiliates of any kind, past or present, and each of its officers, directors, agents, employees, attorneys, or any persons acting on their behalf.

13. The parties represent and warrant that they have the full right, power, authority, and capacity to enter into and execute this Stipulation of Settlement.

14. Any and all understandings and agreements heretofore made between the parties are superseded by this Stipulation of Settlement, which alone fully and completely expresses the agreement between the parties relating to its subject matter, and the same is entered into with no party relying upon any statement or representation not embodied in this Stipulation of Settlement. Any modification of this Stipulation of Settlement may be made only by an instrument in writing signed by or on behalf of both parties.

15. This Stipulation of Settlement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois without regard to the choice of law principles thereof.

16. If any term or provision of this Stipulation of Settlement is declared invalid by a court or arbitration panel of competent jurisdiction in a final ruling from which no appeal is taken, the remaining provisions of this Stipulation of Settlement will be unimpaired, and the invalid or unenforceable provision will be replaced with a provision that is valid and enforceable and that comes closest to the parties' intention underlying the invalid or unenforceable provision.

17. This Stipulation of Settlement may be executed on the original document or corresponding copies, each of which shall be deemed to constitute an original. Facsimile signatures shall be valid and binding as if original signatures.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have caused this Stipulation of Settlement to be duly executed as of the date set forth with the respective signatures below:

PLAINTIFF AND CLASS REPRESENTATIVE,
KEITH L. DAVIDSON

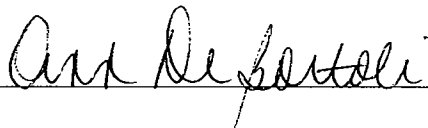
Date: _____

CLASS COUNSEL, CAFFERTY FAUCHER LLP

By: _____

Date: _____

PEOPLES ENERGY SERVICES CORPORATION



By: Ann DeBortoli
Title: Vice President of Peoples Energy Service
Corporation

Date: 5-4-07

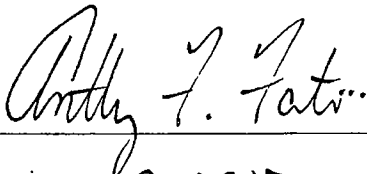
IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have caused this Stipulation of Settlement to be duly executed as of the date set forth with the respective signatures below:

PLAINTIFF AND CLASS REPRESENTATIVE,
KEITH L. DAVIDSON



Date: May 7, 2007

CLASS COUNSEL, CAFFERTY FAUCHER LLP

By: 

Date: MAY 7, 2007

PEOPLES ENERGY SERVICES CORPORATION

By: Ann DeBortoli
Title: Vice President of Peoples Energy Service Corporation

Date: _____