

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS

FOR THE FOURTEENTH JUDICIAL
CIRCUIT

Richard Lightsey, LeBrian Cleckley, Phillip
Cooper, et al., on behalf of themselves and all
others similarly situated,

Plaintiffs,

Vs.

South Carolina Electric and Gas Company, a
Wholly Owned Subsidiary of SCANA,
SCANA Corporation and the State of South
Carolina,

Defendants,

South Carolina Office of Regulatory Staff,

Intervenor.

Civil Action No. 2017-CP-25-00335

ORDER

Before the court is a Fee Petition filed on behalf of Objectors' Counsel. In addressing this Fee Petition, the court notes that the Attorney General's Office has filed a Return and argued that the court should consider the important role the Attorney General's Office played in this case, both as to the prosecution of underlying case by Class Counsel and in opposing the original Fee Petition submitted by Class Counsel which Objectors' Counsel opposed as part of the objection. In addressing Objectors' Fee Petition, the court notes this Return and the Attorney General's position as outlined above. Accordingly, the court has given weight and consideration to the Attorney General's position and the arguments advanced by the Attorney General's office. The other parties to this action have taken no position related to Objectors' Fee Petition.

Objectors' Counsel may be entitled to attorneys' fees if the objection was successful and

resulted in a net benefit to the class. *In re Prudential Ins. Co. of America Sales Practices Legislation*, 273 F.Supp.2d 563, 565 (D.N.J. 2003); *In re Puerto Rican Cabotage Antitrust Litigation*, 815 F.Supp.2d 448, 466 (D. P.R. 2011); *Rodriguez v. Disner*, 688 F3d. 645,658 2012-2 Trd Cas. (CCH) ¶ 78006 (9th Cir. 2012); *Useton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 855 (10th Cir. 1993). Objectors' Counsel meet this standard because they have successfully negotiated a settlement with Class Counsel that resulted in Class Counsel reducing their claim to attorneys' fees by a total of \$15,000,000.

In determining fees awarded to Objectors' Counsel for successful objections courts utilize a percentage of the common fund approach. "[T]he fee award to the Objectors is intended to reflect only the value they added to the settlement....The Court believes that the percentage-of-recovery method will yield a more accurate and equitable fee award." *In re Prudential Ins. Co. of America Sales Practices Legislation*, 273 F.Supp.2d 563, 566-567 (D.N.J. 2003). "Weight assigned to the monetary results achieved should predominate over all the criteria in making attorney's fees awards in common fund cases." *Howes v. Atkins*, 668 F.Supp. 1021, 1025 (E.D. Ky. 1987).

With this basic framework in mind, South Carolina courts consider six factors when determining attorney's fees: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

In considering these six factors the court finds this was an extremely difficult objection to pursue against some of the best lawyers in South Carolina (both Class Counsel and Defense

Counsel). In making this finding, the lengthy and detailed submissions as well as the long and detailed arguments of all counsel at the May 14, 2019 support the court's conclusion.

In considering the time expended, the court notes that Objectors' Counsel spent a total of 1,222.50 attorney hours, 72.6 hours of paralegal time and 27.3 hours for law clerks.

Turning to the "professional standing of counsel," each of the three attorneys involved have over 20 years experience. Each has impressive credentials as evidenced by their CVs that were submitted to the court. Their written submissions to the court were of the highest quality. Likewise, at the May 14, 2019 hearing Counsel's oral arguments were of highest quality.

It is undisputed this was a contingency fee case. Thus, Objectors' Counsel took a significant risk in pursuing the objection with an unknown outcome and a difficult objection to make. The fact that no other attorneys or law firms in South Carolina (or elsewhere) made or pursued an objection shows the difficulty in pursuing the objection in this case. Nonetheless, Objectors' Counsel did so and did so with great success and benefit to the class.

Objectors' Counsel obtained extremely beneficial results for the class. Specifically, through their objection and subsequent settlement negotiations, they obtained an extra \$15,000,000 for the class. The settlement they negotiated with Class Counsel was an arms-length transaction reached over multiple weeks. Only after brokering a deal on behalf of the class did Objectors' Counsel submit their own fee petition that was based on a percentage of what they recovered for the class.

In considering the customary legal fees charged, the court notes that in class action cases based on a common fund, fee awards typically range in the 20-30% range with an average recovery of around 25%. *Newberg on Class Actions* §15.83 (5th ed.). Objectors' Counsel seek

less than this. The court notes that Objectors' Counsel seeks a smaller percentage of recovery because of the Attorney General's Return and arguments advanced by the Attorney General's Office at the May 14, 2019 hearing. Objectors' Fee Petition is also consistent with how other courts have awarded fees in similar cases. *See Howes v. Atkins*, 668 F.Supp. 1021 (E.D. Ky. 1987); *Great Neck Capital Appreciation Inv. Partnership, L.P. v. PricewaterhouseCoopers, L.L.P.* 212, F.R.D. 400, 412-13 Fed. Sec. L. Rep. (CCH) P 92229 (E.D. Wis. 2002) and *In re Prudential Ins. Co. of America Sales Practices Legislation*, 273 F.Supp.2d 563, 566-567 (D.N.J. 2003).

NOW, THEREFORE, IT IS HEREBY ORDERED that Objectors' Counsel Fee Petition is **APPROVED** and they are awarded fees in the total amount of \$2,964,042.03, costs in the total amount of \$29,957.97 and incentive payments for the named objectors totaling \$6,000.00 which shall be disbursed equally to each household participating as a named objector in this matter. The payments to Objectors' Counsel shall be made at the same time and under the same terms and conditions as payments to Class Counsel and the incentive payments shall be made at the same time and under the same terms and conditions as incentive payments made to named parties.

IT IS SO ORDERED!

John C. Hayes, III, Presiding Judge

_____, 2019

_____, South Carolina



Hampton Common Pleas

Case Caption: Richard Lightsey VS South Carolina Electric & Gas

Case Number: 2017CP2500335

Type: Order/Attorney Fees

So Ordered

s/John C. Hayes III 2049