

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

KENNETH WALTON GEORGE, DENNIS)
REED BOWEN, CLYDE FREEMAN,)
GEORGE MOYERS, JIM MATTHEWS,)
and HENRY MILLER, on their own behalf and)
on behalf of a class of persons similarly situated,)

Plaintiffs,)

C.A. No.: 8:06-cv-00373-JMC

vs.)

DUKE ENERGY RETIREMENT CASH)
BALANCE PLAN and DUKE ENERGY)
CORPORATION,)

Defendants.)

ORDER PRELIMINARILY APPROVING THE PARTIES' SETTLEMENT AGREEMENT AND RELEASE, APPROVING THE FORM AND MANNER OF NOTICE, AND SCHEDULING A HEARING ON THE FAIRNESS OF THE SETTLEMENT AGREEMENT PURSUANT TO FEDERAL RULE 23(e)

Pending before the Court is the motion of Plaintiffs for Preliminary Approval of the Settlement Agreement, to Approve the Form and Manner of Notice and to Schedule a Fairness Hearing.

IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matters of this Action, the Plaintiffs, the Class Members, and the Defendants pursuant to 29 U.S.C. § 1132(e).
2. To the extent not otherwise defined herein, all defined terms shall have the same meaning as used in the Settlement Agreement.
3. Pursuant to Federal Rule 23, the Court previously certified two Classes in its Order

of September 4, 2009, as modified by its Order of September 28, 2009. The Classes are as follows:

a. **“Whipsaw Class”**

All former employees of Duke who were participants in Duke’s Cash Balance Plan, between January 1, 1997 and December 31, 2002, who retired and took lump sum benefits on or before August 17, 2006, prior to age 65, and whose lump sum benefits were calculated during a calendar quarter when the Plaintiffs claim that the applicable interest crediting rate under the relevant Plan documents exceeded the applicable interest rate for discounting to present value under the Plan documents.

b. **“Interest Rate Class”**

All present and/or former vested employees of Duke who were participants in Duke’s Cash Balance Plan at any time between January 1, 1997 and December 31, 1998, excluding participants who had retired on or before December 31, 1996.

Notice of the certification of the Classes was duly provided by Class Counsel to the Class Members as required by this Court. The time for requesting exclusion from the Classes expired on March 17, 2010. Attached to this Order as Exhibit 1 is a list of all persons who properly excluded themselves from one or both of the Classes. The Court hereby orders that, to the extent that the individuals listed in Exhibit 1 were or are members of one or both of the certified classes in this matter, each is deemed to have opted-out of one or both classes as indicated in the Exhibit.

4. The proposed Settlement is hereby preliminarily approved. The Court finds that the proposed Settlement, supported by counsel already certified as adequate Class Counsel and achieved through arm’s-length negotiations after three separate mediation sessions, is sufficiently fair, reasonable and adequate to receive preliminary approval and to proceed to a Fairness Hearing.

5. The Court shall consider whether to give final approval to the Settlement at a hearing on May 16, 2011 at 10:00 a.m. (the “Fairness Hearing”). At the Fairness Hearing, the Court will

consider (a) whether the proposed Settlement is fair, reasonable and adequate and should be given final approval; (b) whether to grant the Petition for Class Counsel's Fees, Expenses and Incentive Awards; (c) any timely and proper objections to the Settlement or objections to the Petition for Class Counsel's Fees, Expenses and Incentive Awards; and (d) any other matters necessary or appropriate for the Court's consideration. The Court reserves the right to approve the Settlement with modifications, as may be agreed to by the Parties, and without further notice to the Class Members. The Fairness Hearing may be adjourned or rescheduled without further notice to the Classes other than by announcement in open court or by Order on the Court's docket.

6. The Court appoints Wallace & Graham, P.A. as Settlement Administrator. The Settlement Administrator is directed to provide notice to the Classes of the Settlement and their right to object to (a) the Settlement, (b) the Petition for Class Counsel's Fees, Expenses and Incentive Awards, as well as the right of Class Members to appear and be heard at the Fairness Hearing. Mailed Notice in the form of Exhibit 2 hereto shall be mailed on or before February 18, 2011 to the last known addresses of all Class Members. The Settlement Administrator shall engage in reasonable efforts to locate any Class Member whose Mailed Notice is returned as undeliverable and to make a second mailing to such Class Member. The Publication Notice in the form substantially similar to that found in Exhibit 3 hereto shall be published once, on or before February 25, 2011, in the following newspapers: *USA Today*, *The Asheville Citizen-Times*, *The Greenville News*, *The Charlotte Observer*, *News & Record, Inc.* and *The State*.

7. The Court finds that the forms of Mailed Notice and Publication Notice (collectively, the "Notice"), and the plan for dissemination and publication of the Notice, are the best practicable, comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure and with due

process, and are reasonably calculated under the facts of this Action to apprise members of the Classes of the proposed Settlement and of their right to object to and be heard regarding the Settlement and the Petition for Class Counsel's Fees, Expenses and Incentive Awards.

8. The Settlement Administrator shall file an Affidavit attesting to the satisfaction of the Notice requirements described in Paragraphs 6 and 7 on or before May 9, 2011 (at least seven (7) days prior to the Fairness Hearing).

9. Defendants have presented this Court with a form of notice under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, as well as a list of the state officers to be served. (*See* Group Exhibit 4 hereto). Defendants are to serve the CAFA Notice on those individuals by mailing the CAFA Notice on or before February 10, 2011. The Court finds that Defendants, upon mailing of the CAFA Notice, will have complied with the notice requirements of CAFA.

10. Class Counsel shall file their Petition for Class Counsel's Fees, Expenses and Incentive Awards on or before February 18, 2011. Class Counsel shall publish copies of the Settlement Agreement, the Mailed Notice, the Publication Notice, and the Petition for Class Counsel's Fees, Expenses and Incentive Awards on a website to be established by the Settlement Administrator.

11. Any Class Member may appear at the Fairness Hearing, in person or through counsel, and be heard to the extent permitted by this Court in opposition to the fairness, reasonableness and adequacy of the Settlement or the Petition for Class Counsel's Fees, Expenses and Incentive Awards. However, unless excused by this Court, no Class Member shall be heard on any of these matters unless, on or before April 4, 2011, such Class Member files a notice of an intention to appear and provides a written statement that indicates (a) all bases for objection, (b) all documentation in

support of the objection, (c) the authority, if any, supporting the objection, (d) the appearance of any counsel representing the objector, and (e) a list of all witnesses expected to be called in support of the objection. Unless all materials are filed through the Court's electronic docket, copies of all materials filed shall be served on Class Counsel and Defendants' Counsel. Any Class Member who does not object in the foregoing manner shall be deemed to have waived all objections.

12. The Parties shall file memoranda in support of final approval of the Settlement, and responses to any objection(s) on or before April 25, 2011. In addition, Class Counsel shall file any supplemental Petition for Attorney's Fees, Expenses and Incentive Awards on or before April 25, 2011.

13. The Court reserves the right to adjourn and/or reschedule the Fairness Hearing without further notice of any kind; therefore, any Class Member intending to attend the Fairness Hearing should (in addition to complying with all instructions and requirements above) confirm the date, time and location of the Fairness Hearing with Class Counsel.

14. If the Court grants Final Approval to the Settlement, Class Members shall be bound by all the provisions of the Settlement and all determinations and judgments made pursuant to the Settlement, including the Release and the Final Order and Judgment dismissing the Action with prejudice. No Class Member may request exclusion from the Settlement.

15. Pending the final determination of whether the Settlement should be approved, all pretrial proceedings and briefing schedules are stayed, except as specifically provided for in this Order. If the Settlement is terminated, the Settlement is not finally approved by the Court, or the Effective Date of the Final Order and Judgment does not occur, the stay of the Action shall be immediately terminated and each Party to the Settlement Agreement shall be restored to his, her, or

its respective position as it existed prior to the execution of the Settlement Agreement.

16. As provided in Sections 1.45 and 4.1 of the Settlement Agreement, pending the final determination of whether the Settlement should be approved, Plaintiffs and each Class Member shall be enjoined from commencing or prosecuting, either directly or indirectly, any action in any other court concerning or relating to any of the Released Claims. Such injunction shall remain in force until such time as Plaintiffs and Defendants notify the Court that the Settlement Agreement has been terminated or until the Court enters a Final Order and Judgment.

17. The Court authorizes the dissemination of the communication that Duke has proposed to issue and/or make available to its employees. A copy of that communication is attached hereto as Exhibit 5.

18. If the Settlement is finally approved by the Court, the Court shall retain exclusive jurisdiction over Plaintiffs, Defendants, the Class Members and the Action with respect to matters arising out of, or connected with, the Settlement, and may issue such orders as necessary to implement the terms of the Settlement.

SO ORDERED this 8th day of February, 2011.

s/ J. Michelle Childs
J. MICHELLE CHILDS
United States District Judge
District Court of South Carolina