

9/13/18
ENTERED
MARTHA M. MILLER
CLARK CIRCUIT/DISTRICT COURT
BY MM D.C.

COMMONWEALTH OF KENTUCKY
CLARK CIRCUIT COURT
DIVISION ONE
JUDGE WILLIAM G. CLOUSE
CONS. CASE NO. 17-CI-00175

IN RE DELTA NATURAL GAS
COMPANY, INC. STOCKHOLDER
LITIGATION

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: Cons. Case No. 17-CI-00175
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SCHEDULING ORDER

WHEREAS, the parties have determined to settle all claims asserted against the Defendants in the above-captioned consolidated action (the "Consolidated Action") and the action styled as *Parshall v. Delta Natural Gas Company, Inc., et al.*, Case No. 5:17-cv-00194 filed in the United States District Court for the Eastern District of Kentucky (the "Federal Action") in accordance with a Stipulation and Agreement of Compromise, Settlement, and Release dated August 27, 2018 (the "Stipulation"), which, together with the exhibits thereto, *inter alia*, sets forth the terms and conditions for the settlement of the Consolidated Action (the "Settlement") and which provides for dismissal of the Consolidated Action with prejudice; and

WHEREAS, the Stipulation has been filed with the Court and the parties have filed a motion, pursuant to Kentucky Rule of Civil Procedure 23, for entry of this Scheduling Order preliminarily certifying the Class solely for purposes of the Settlement and allowing notice to the Class members as more fully described herein and scheduling a hearing to consider the proposed Settlement; and

WHEREAS, the parties have consented to the entry of this Scheduling Order; and

WHEREAS, the Court has read and considered the Stipulation and the exhibits attached thereto and considered the parties' motion for entry of this Scheduling Order; and

WHEREAS, this Order hereby incorporates by reference the definitions in the Stipulation, and the capitalized words and terms used herein shall have the same meaning as they have in the Stipulation (certain of which are repeated herein for ease of reference only);

IT IS HEREBY ORDERED this ____ day of _____, 2018, that:

1. **Class Certification for Settlement Purposes** – For purposes of the Settlement only, and preliminarily for purposes of this Order, the Consolidated Action shall be maintained and proceed as a class action pursuant to Kentucky Rule of Civil Procedure 23.03 on behalf of the following Class (the "Class"): any person who held or owned common stock of Delta Natural Gas Company, Inc. ("Delta") (whether as a record or a beneficial owner) at any time during the period beginning on and including February 21, 2017 through and including the consummation of the Transaction on September 20, 2017, and any and all of their successors-in-interest, and transferees, immediate and remote. The Defendants are excluded from the Class.

2. For purposes of the Settlement only, and preliminarily for purposes of this Order, the Court appoints Jacob Halberstam, Judy Cole and Paul Parshall as Class Representatives, WeissLaw LLP, Levi & Korsinsky LLP and Rigrodsky & Long, P.A. as Class Counsel, and Gray & White Law and Strause Law Group, LLC as Class Liaison Counsel (together, "Plaintiffs' Counsel").

3. If final approval of the Settlement is not granted by the Court, this preliminary certification of the Consolidated Action as a class action (as well as the appointment of Class Representatives, Class Counsel, and Class Liaison Counsel) shall be automatically vacated.

4. **Settlement Hearing** – A hearing (the “Settlement Hearing”) shall be held on December 4, 2018, at 930 a.m. in the Clark Circuit Court in the Commonwealth of Kentucky at Governor James Clark Judicial Center, 17 Cleveland Ave., Winchester, Kentucky 40392, for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, adequate and in the best interests of the Class and should be approved by the Court; (b) to determine whether the preliminary class certification described in this Order should be made final; (c) to determine whether the Court should enter the Order and Final Judgment substantially in the form attached as Exhibit D to the Stipulation, which, among other things, dismisses the Consolidated Action with prejudice and effectuates the Releases set forth in the Stipulation; (d) to hear the application by Plaintiffs’ Counsel for an award of attorneys’ fees and reimbursement of expenses; and (e) to consider and rule on any such other matters as the Court may deem appropriate.

5. The Court reserves the right: (a) to adjourn the Settlement Hearing without further notice of any kind to the Class other than by oral announcement at the Settlement Hearing; and (b) to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the parties and without further notice to the Class.

6. **Manner of Notice** – Notice of Pendency of Class Action, Class Action Determination, Settlement of Class Action, Settlement Hearing, and Right to Appear (“Notice”) shall be given by Defendants as follows:

(a) No later than fifteen (15) calendar days after the entry of this Order (the “Notice Date”), Delta shall cause a copy of the Notice, substantially in the form attached as Exhibit C to the Stipulation, to be mailed by first-class mail, postage prepaid, to all persons who it has identified as potential Class members;

(b) No later than five (5) calendar days prior to the date of the Settlement Hearing, counsel for Defendants shall file with the Court and serve upon the Plaintiffs, by affidavit or declaration, proof of compliance with the notice procedures directed herein.

7. **Approval of Form and Content of Notice** – The Court: (a) approves, as to both form and content, the Notice attached as Exhibit C to the Stipulation; and (b) finds that the mailing and distribution of the Notice in the manner and form set forth in paragraph 6 of this Order: (i) is the best notice reasonably practicable under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Class members of the pendency of the Consolidated Action, of the terms, consequences and effects of the Settlement (including, without limitation, the Releases to be provided thereunder), and of their rights to object to the proposed Settlement and appear at the Settlement Hearing, (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement, and (iv) satisfies the requirements of Kentucky Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause) and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice before they are mailed and published, respectively.

8. **Supporting Papers and Objections** – Plaintiffs' Counsel shall file and serve papers in support of final approval of the proposed Settlement and their application for an award of attorneys' fees and reimbursement of expenses no later than thirty (30) calendar days prior to the Settlement Hearing. Any objections to the Settlement and/or the application for an award of attorneys' fees and litigation expenses shall be filed and served no later than twenty-one (21) calendar days prior to the Settlement Hearing. If reply papers are necessary, they are to be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

9. Any Class member may enter an appearance in the Consolidated Action, at its/her/his own expense, individually or through counsel of its/her/his own choice, by filing with the Clerk of the Court and delivering a notice of appearance to both Plaintiffs' Counsel and Defendants' counsel listed in the Notice such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class member who does not enter an appearance will be represented by Plaintiffs' Counsel, and shall have and be deemed to have waived and forfeited any and all rights its/she/he may otherwise have to appear separately at the Settlement Hearing.

10. Any Class member may file a written objection to the proposed Settlement and/or the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses and appear and show cause, if it/she/he has any cause, why the proposed Settlement and/or the fee and litigation expense application should not be approved; provided, however, that no Class member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement and/or the fee and litigation expense application unless that person has: (a) filed a written objection with the Clark Circuit Court in the Commonwealth of Kentucky, Governor James Clark Judicial Center, 17 Cleveland Avenue, P.O. Box 687, Winchester, Kentucky 40392, and (b) served copies of such objection in the manner provided in the Notice such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing on each of the following counsel: (i) Donald J. Enright, Levi & Korsinsky LLP, 1101 30th Street, NW, Suite 115, Washington, D.C. 20007; (ii) Mark Gray, Gray & White Law, 713 E. Market St. #200, Louisville, KY 40202; (iii) Edward N. Moss, O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, NY 10036; (iv) Steven Loy, Stoll Keenon Ogden, PLLC, 300

West Vine Street, Suite 2100, Lexington, KY 40507; and (v) Byron E. Leet, Wyatt Tarrant & Combs LLP, 500 West Jefferson Street, Suite 2800, Louisville, KY 40202.

11. Any objections, filings and other submissions by the objecting Class member must: (a) state the name, address and telephone number of the person objecting and, if represented by counsel, the name, address and telephone number of its/her/his counsel; (b) be signed by the objector; (c) contain a written detailed statement of the Class member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class member wishes to bring to the Court's attention; and (d) demonstrate that the objector is a member of the Class by including documents sufficient to prove that the objector held common stock of Delta during the Class Period.

12. Any Class member who does not make its/his/her objection in the manner provided in paragraphs 10 and 11 of this Order, shall: (a) have and be deemed to have waived and forfeited any and all rights it/she/he may otherwise have to object to the Settlement and/or any award of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel; (b) forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, and the attorneys' fees and expenses requested and/or awarded, in this or any other proceeding; (c) be bound by all of the terms of the Stipulation and by all proceedings, orders and judgments entered by the Court in the Consolidated Action, including the Order and Final Judgment; and (d) have and be deemed to have waived its/her/his right to be heard, and otherwise be forever barred from being heard, with respect to any matters concerning the Settlement and/or the Order and Final Judgment.

13. None of the Released Persons shall have any responsibility whatsoever for any application for attorneys' fees and reimbursement of expenses submitted by Plaintiffs' Counsel

except as is expressly set forth in the Stipulation. Any application for attorneys' fees and reimbursement of expenses submitted by Plaintiffs' Counsel will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

14. **Termination** – In the event that the Settlement is terminated pursuant to the terms of the Stipulation or the Effective Time does not otherwise occur: (a) the Settlement and the Stipulation shall be null and void and without prejudice to, or force and effect to or upon, the rights of the parties and none of their terms shall be effective or enforceable (except for those provisions contained in ¶¶ 2, 11, 12, 13 and 17 of the Stipulation); (b) the parties shall be deemed to have reverted to their respective litigation positions in the Consolidated Action and the Federal Action immediately prior to May 25, 2017 (including, without limitation, that the Class will not be deemed to have been certified); (c) except as otherwise expressly provided in the Stipulation, the parties shall proceed in all respects as if the MOU and the Stipulation had not been executed and this Scheduling Order (and any related orders) had not been entered; and (d) the MOU, the Stipulation, this Scheduling Order, the Settlement, and any discovery taken in the Consolidated Action or the Federal Action shall not: (i) be deemed to prejudice in any way the positions of the parties with respect to the Consolidated Action, the Federal Action, or any other litigation or judicial proceeding, (ii) constitute an admission of fact or wrongdoing by any of the parties, and/or (iii) be used in connection with the Consolidated Action, the Federal Action or any other litigation or judicial proceeding.

15. **Stay of Litigation** – All proceedings in the Consolidated Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination by the Court of whether the Settlement should be approved, Plaintiffs and all other Class members are barred

and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement, prosecution, or instigation of any of the Released Claims against any of the Released Persons.

16. **Use of This Order** – Whether or not the Settlement is approved by the Court and whether or not the Settlement is consummated, this Order, the facts and terms of the Settlement, the MOU and the Stipulation (including all of its exhibits), as well as all negotiations, discussions, acts performed, agreements, drafts, documents signed, orders entered and proceedings in connection with the Settlement, including any discovery taken in the Consolidated Action or the Federal Action (except with respect to the Stipulation itself, or as may be necessary to enforce or obtain Final Court Approval of the Settlement):

(a) shall not be described as, construed as, interpreted as, or offered or received against any of the Released Persons as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons as to: (i) the truth of any fact alleged in the Consolidated Action or the Federal Action; (ii) the validity of any claim that has been or could have been asserted in the Consolidated Action, the Federal Action or in any other litigation; (iii) the deficiency of any defense that has been or could have been asserted in the Consolidated Action, the Federal Action or in any other litigation; and/or (iv) any liability, breach of fiduciary duty, negligence, fault or wrongdoing on their part;

(b) shall not be described as, construed as, interpreted as or offered or received against Plaintiffs or any other Class member as evidence of any infirmity in the claims of Plaintiffs or any other Class member;

(c) shall not be construed, offered, interpreted, deemed or received in evidence or otherwise against any of the Released Persons in any other civil, criminal or administrative

action, litigation or proceeding, except in connection with any proceeding to enforce the terms of the Stipulation or this Scheduling Order; and

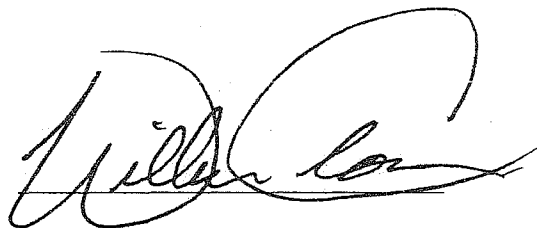
(d) shall not be deemed or construed to create any inferences of any damages, or lack of damages, suffered by Plaintiffs or any of the other Class members.

17. The Court retains jurisdiction over the Consolidated Action to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED:

Dated:

9/13/18

A handwritten signature in dark ink, appearing to read "William L. Carter", written over a horizontal line.