

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

JARRETT JENKINS, EMMOT STEELE, FRANCES ROYAL, DANAI EWAN and CHARMAINE WHYTE on behalf of themselves and all others similarly situated, Plaintiffs, - against – NATIONAL GRID USA SERVICE COMPANY, INC., KEYSPAN GAS EAST CORPORATION, NIAGARA MOHAWK POWER CORPORATION, and THE BROOKLYN UNION GAS COMPANY, Defendants.	Case No. 15-cv-1219 Hon. Joanna Seybert, U.S.D.J. Hon. Arlene R. Lindsay, U.S.M.J.
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**DECLARATION OF JOSEPH S. TUSA IN SUPPORT OF PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Joseph S. Tusa, an attorney for Plaintiffs and Court-appointed Class Counsel, declares as follows:

1. I am a member in good standing of the bar of the United States District Court for the Eastern District of New York and a shareholder in the firm Tusa P.C., co-counsel for Plaintiffs in this lawsuit and Court-appointed Class Counsel for the Settlement Class.¹ I respectfully submit this declaration in support of Plaintiffs’ *Motion for Final Approval of Class Action Settlement*.

2. I have been actively involved in all aspects of the investigation and prosecution of this case and the Parties’ settlement negotiations. I am familiar with the factual matters discussed herein and could and would testify competently to them if called upon to do so.

3. The Settlement Class is defined in the Settlement Agreement as:

[A]ll persons residing in the United States who, from March 9, 2011 until October 29, 2021, received a telephone call on a cellular telephone using a prerecorded or artificial voice message concerning: (1) the payment or status of a current or past National Grid Utility Account or bill; (2) an “important matter” concerning a current or past National Grid Utility

¹ All capitalized terms are defined in the accompanying *Class Action Settlement Agreement and Release*.

Account or bill; (3) a disconnect notice concerning a current or past National Grid Utility Account; (4) an invitation from National Grid to attend a Customer Assistance Expo or to meet with or speak to the National Grid Consumer Advocacy Group, National Grid Consumer Advocate, or National Grid Credit Department; or (5) the availability of a government assistance program, such as the Home Energy Assistance Program (HEAP), to assist with payments to National Grid. “National Grid” includes utilities operating in New York as KeySpan Gas East Corporation, The Brooklyn Union Gas Company, Niagara Mohawk Power Corporation; in Massachusetts as Boston Gas Company, Colonial Gas Company (now part of Boston Gas), Massachusetts Electric Company, Nantucket Electric Company; and in Rhode Island as The Narragansett Electric Company. The Settlement Class excludes (1) officers, directors and employees of National Grid as well as any outside counsel representing National Grid in this litigation; (2) any judge to whom this case is assigned, along with his or her staff, and (3) immediate family of any individual excluded by (1) or (2).

Dkt. 733-1 (*Agreement*), ¶ 2.30.

4. The Settlement Agreement required National Grid to search its records and provide Plaintiffs with a representation estimating the size of the Settlement Class. *Id.*, ¶ 4.10. National Grid provided that estimate to Plaintiffs in a letter dated, November 24, 2021. *See Ex. A.* That letter estimated the size of the Settlement Class at 3,608,351 persons.

5. Five persons filed four objections to final approval of the Settlement. Another person, Mrs. Sivilich, filed both a request for exclusion from the Settlement and separately an objection to the Settlement. After receiving those objections, Class Counsel wrote each a letter offering to discuss the Settlement and their respective objections. *See Ex. B.* None of the objectors responded, except for an email received from Messrs. Cabane and Halpert and the spouse of Mrs. Sivilich to whom the undersigned spoke by telephone.

6. After receiving the objections, Class Counsel attempted to independently confirm whether the objectors are Settlement Class Members by searching the discovery produced in this action, supplemented by their expert’s analysis. Based on those efforts, Class Counsel can confirm only that Mr. Amado is a member of the Settlement Class.

7. In addition to the five persons who filed objections to the Settlements, two others (Messrs. Anklowitz and Dlott) submitted objections that were later withdrawn after speaking with Class Counsel. *See* Dkts. 740, 741, 750, 752). Class Counsel did not offer any compensation to those persons to withdraw their objections. Mr. Dlott was able and permitted to file a claim to share in the Net Settlement Fund as the personal representative for the Estate of George Dlott.

8. Class Counsel estimates that Settlement Class Members who submit timely and valid claims will receive approximately \$50.00 each as a Settlement payment. That amount is estimated by taking the Settlement payment (\$38.5 million), subtracting Angeion's estimate of Settlement notice, administration and distribution costs, Class Counsel's requests for attorneys' fees (\$12.705 million), reimbursement of costs (\$1,052,082.51), and Plaintiff service awards (\$55,000), and then dividing by the current number of Settlement Class Member claims submitted. While Class Counsel does not yet know the final amount of Settlement notice, administration and distribution costs, based on discussions with Angeion, an estimate of \$3.7 million was used in the payment calculation.

9. I declare under penalty of perjury the foregoing is true and correct.

Dated: Southold, New York
June 7, 2022

Respectfully submitted,

By: /s/ Joseph S. Tusa
Joseph S. Tusa

TUSA P.C.

Joseph S. Tusa
joseph.tusapc@gmail.com
P.O. Box 566
55000 Main Road, 2nd Floor
Southold, NY 11971
Tel. (631) 407-5100

EXHIBIT A



BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK WASHINGTON, DC

RICHARD H. BROWN
605 Third Avenue, 31st Floor
New York, NY 10158
T: (212) 297-5854 F: (973) 206-6129
rbrown@daypitney.com

November 24, 2021

Via Email

Douglas I. Cuthbertson, Esq.
Lieff Cabraser Heimann & Bernstein LLP
250 Hudson Street, 8th Floor
New York, NY 10013

Re: *Jenkins, et al. v. National Grid USA, et al.*
Case No. 15-cv-1219

Dear Doug:

We write in accordance with Section 4.10 of the Settlement Agreement in the *Jenkins* matter to provide information regarding National Grid's estimate of the size of the Settlement Class. The estimate for the number of class members in New York, Massachusetts, and Rhode Island, which is based on the total number of unique cell phone numbers that received prerecorded calls based on the criteria set forth in Section 2.30 of the Settlement Agreement ("Qualifying Calls"), is 3,608,351. The basis for this estimate is set forth below, and a spreadsheet (Jenkins- Estimate of Class Size) more fully describing the calculations for this the estimate is produced herewith. In general, the projected number of class members is derived from estimates of: (a) the number of Qualifying Calls in a period, (b) the number of calls to a customer that had not been called in a previous year (starting in March 2011), and the number of newly-called customers who were called on a cell phone.

New York. The figure for class members in New York is derived, in part, from the actual data provided for FY2011 through FY2018 in the Anya Verkhovskaya Report.¹ For FY2019 and FY2020, it was assumed that the total number of prerecorded calls for FY2019 and FY2020 were the same as in FY 2018. For FY 2021, based on a change in calling practices due to the pandemic as reported by National Grid, it was assumed that the total number of prerecorded calls for that year was 25% of FY2020. For FY2022, it was assumed, again based on information provided by National Grid, that the total calls per month for the period between March 2021 and September 2021 were 51% of the average calls per month in FY2020. The foregoing resulted in an estimate of the number of prerecorded calls to New York accounts from March 2011 through September 30, 2022.

¹ For these purposes, a fiscal year runs from April 1 to March 31 of the following year. Thus, FY 2018 commenced on April 1, 2017 and ended on March 31, 2018.



Douglas I. Cuthbertson, Esq.
November 24, 2021
Page 2

To estimate the total number of unique cell phone numbers that received Qualifying Calls in FY2019, FY2020, FY2021 and the relevant portion of FY2022, the ratio of unique phone numbers to total number of prerecorded calls was calculated for FY2011 through FY2018, and the average year-over-year decline (38%) was used to calculate an estimate. As reflected in the enclosed spreadsheet, the resulting total estimate of class members in New York is 2,023,909.

Massachusetts. To estimate of the total number of Qualifying Calls to Massachusetts, it was assumed that the total number of Qualifying Calls for FY2011 through FY2018 was 56% of the total number of Qualifying Calls in New York for the same years. This percentage was based on the ratio reflected in the portion of the Rhode Island regulatory submission attached as Exhibit 7 to the John Nicolaou Certification filed in Support of Plaintiffs' Motion for Class Certification ("Exhibit 7"). For FY2019 through the relevant portion of FY2022, the total number of prerecorded calls by credit/collections was based on data provided by National Grid, except that for FY2019 and FY2020, the number of calls by "Massachusetts Gas" was estimated using the ratio of "Massachusetts Gas" calling in FY 2021 relative to other New England calling. The data in the Verkhovskaya Report indicate that 58.4% of all calls that she tabulated were placed to cell phones. Applying that ratio to total calls to Massachusetts led to an adjustment of total prerecorded calls to determine the number of Qualifying Calls for FY2019 through the relevant portion of FY2022. Using the same year-over-year decline reflected in the New York data (and discussed above), the estimate of the total number of unique cell phone numbers that received Qualifying Calls in Massachusetts is 1,131,971, as shown in the enclosed spreadsheet.

Rhode Island. To estimate the total number of Qualifying Calls to Rhode Island, it was assumed that the total number of Qualifying Calls for FY2011 through FY2018 was 22% of the total number of Qualifying Calls in New York for the same years. This percentage was based on the ratio reflected in Exhibit 7. For FY2019 through the relevant portion of FY2022, the total number of prerecorded calls by credit/collections was estimated based on data provided by National Grid. Applying the 58.4% ratio to total calls to Rhode Island led to an adjustment of total prerecorded calls to determine the number of Qualifying Calls for FY2019 through the relevant portion of FY2022. The year-over-year decline ratio discussed above was used to estimate that 452,471 unique cell phone numbers in Rhode Island received Qualifying Calls, as shown in the enclosed spreadsheet.

Very truly yours,

/s/ Richard H. Brown

Richard H. Brown

RHB/s

cc: Joseph S. Tusa, Esq.
John T. Nicolaou, Esq.

EXHIBIT B

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New York City

Joseph S. Tusa
Attorney at Law
joseph.tusapc@gmail.com

May 6, 2022

Mr. J.M. Amado
1645 Grandview Avenue
Utica, NY 13502-4841

Re: National Grid Class Action Settlement

Dear Mr. Amado:

I am one of the attorneys for the plaintiffs and the proposed settlement class in the case against National Grid claiming violations of the Telephone Consumer Protection Act. I received your objection to the settlement. If you would like to discuss your objection or the settlement, please give me a call at (631) 407-5100. Or, if you prefer, I can call you if you provide me a telephone number by email (joseph.tusapc@gmail.com). You are under no obligation to speak to me about your objection, but I wanted to provide you an opportunity to do so.

Very truly yours,



Joseph S. Tusa

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May 26, 2022

Mr. J.M. Amado
1645 Grandview Avenue
Utica, NY 13502-4841

Re: National Grid Class Action Settlement; E.D.N.Y. Case No. 15-cv-1219-JS-ARL

Dear Mr. Amado:

I am one the attorneys for plaintiffs and the proposed settlement class in the putative class action named above against National Grid, and wrote to you before concerning your objection to the settlement. Please be advised that on May 25, 2022, the federal judge overseeing this case adjourned the date of the hearing to consider the motion for final approval of the settlement and the related motion for Class Counsel's attorneys' fees, reimbursement of costs and Plaintiff service awards from **June 10, 2022 to June 24, 2022 at 9:30 a.m.**

The Court's order adjourning the hearing is enclosed. Please let me know if you have any questions. I can be reached by phone at (631) 407-5100 and email at joseph.tusapc@gmail.com.

Very truly yours,



Joseph S. Tusa

From: ecf_bounces@nyed.uscourts.gov

Subject: Activity in Case 2:15-cv-01219-JS-ARL Jenkins v. National Grid USA et al Terminate Deadlines and Hearings

Date: May 25, 2022 at 5:22 PM

To: nobody@nyed.uscourts.gov

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U.S. District Court

Eastern District of New York

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Sean Patrick Flynn sflynn@grsm.com

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149 West 136th Street #1
New York, NY 10030

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Avery Scott Halfon ahalfon@lchb.com, avery-halfon-9596@ect.pacerpro.com

Allen P. Pegg allen.pegg@hoganlovells.com, olga.garcia@hoganlovells.com

Sean Patrick Flynn sflynn@grsm.com

2:15-cv-01219-JS-ARL Notice will not be electronically mailed to:

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New York City

Joseph S. Tusa
Attorney at Law
joseph.tusapc@gmail.com

May 13, 2022

Mr. Christopher Cabane
Mr. Barry Halpert
336 Rathbun Avenue
Staten Island, NY 10312

Re: National Grid Class Action Settlement

Dear Mr. Cabane and Mr. Halpert:

I am one of the attorneys for the plaintiffs and the proposed settlement class in the case against National Grid claiming violations of the Telephone Consumer Protection Act. I received your objection to the settlement. If you would like to discuss your objection or the settlement, please give me a call at (631) 407-5100. Or, if you prefer, I can call you if you provide me a telephone number by email (joseph.tusapc@gmail.com). You are under no obligation to speak to me about your objection, but I wanted to provide you an opportunity to do so.

I also write to answer the question posed in Paragraph 4 of your May 5, 2022 objection, inquiring whether a Settlement Class Member can submit a claim and also object. The answer is “yes,” a Settlement Class Member can file a claim form and also object to the Settlement. However, when a Settlement Class Member chooses to exclude himself (also called an “opt-out”) from the Settlement, thereby preserving his claims against the defendants, will he not be permitted to simultaneously file a claim.

Very truly yours,



Joseph S. Tusa

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New York City

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Attorney at Law
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May 26, 2022

Mr. Christopher Cabane
Mr. Barry Halpert
336 Rathbun Avenue
Staten Island, NY 10312

Re: National Grid Class Action Settlement; E.D.N.Y. Case No. 15-cv-1219-JS-ARL

Dear Messrs. Cabane and Halpert:

I am one the attorneys for plaintiffs and the proposed settlement class in the putative class action named above against National Grid, and wrote to you before concerning your objection to the settlement. Please be advised that on May 25, 2022, the federal judge overseeing this case adjourned the date of the hearing to consider the motion for final approval of the settlement and the related motion for Class Counsel's attorneys' fees, reimbursement of costs and Plaintiff service awards from **June 10, 2022 to June 24, 2022 at 9:30 a.m.**

The Court's order adjourning the hearing is enclosed. Please let me know if you have any questions. I can be reached by phone at (631) 407-5100 and email at joseph.tusapc@gmail.com.

Very truly yours,



Joseph S. Tusa

From: ecf_bounces@nyed.uscourts.gov
Subject: Activity in Case 2:15-cv-01219-JS-ARL Jenkins v. National Grid USA et al Terminate Deadlines and Hearings
Date: May 25, 2022 at 5:22 PM
To: nobody@nyed.uscourts.gov

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U.S. District Court

Eastern District of New York

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Case Name: Jenkins v. National Grid USA et al

Case Number: [2:15-cv-01219-JS-ARL](#)

Filer:

Document Number: No document attached

Docket Text:

ELECTRONIC ORDER ADJOURNING PROCEEDING: Due to a conflict in the Court's calendar, the Final Settlement Approval Hearing is adjourned to 6/24/2022 at 9:30 AM in Courtroom 1030 before Judge Joanna Seybert. Plaintiff is directed to notify the timely objectors of the adjournment date and file proof of service forthwith. Ordered by Judge Joanna Seybert on 5/25/2022. (Russo, Eric)

2:15-cv-01219-JS-ARL Notice has been electronically mailed to:

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Joseph S. Tusa
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joseph.tusapc@gmail.com

May 6, 2022

Ms. Lea Kathleen Sivilich
3575 SW 51st Terrace
Ocala, FL 34474

Re: National Grid Class Action Settlement

Dear Ms. Sivilich:

I am one of the attorneys for the plaintiffs and the proposed settlement class in the case against National Grid claiming violations of the Telephone Consumer Protection Act. I received your objection to the settlement. If you would like to discuss your objection or the settlement, please give me a call at (631) 407-5100. Or, if you prefer, I can call you if you provide me a telephone number by email (joseph.tusapc@gmail.com). You are under no obligation to speak to me about your objection, but I wanted to provide you an opportunity to do so.

Very truly yours,



Joseph S. Tusa

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New York City

Joseph S. Tusa
Attorney at Law
joseph.tusapc@gmail.com

May 26, 2022

Mrs. Lea Kathleen Sivilich
3575 SW 51st Terrace
Ocala, FL 34474

Re: National Grid Class Action Settlement; E.D.N.Y. Case No. 15-cv-1219-JS-ARL

Dear Mrs. Sivilich:

I am one the attorneys for plaintiffs and the proposed settlement class in the putative class action named above against National Grid, and wrote to you before concerning your objection to the settlement. Please be advised that on May 25, 2022, the federal judge overseeing this case adjourned the date of the hearing to consider the motion for final approval of the settlement and the related motion for Class Counsel's attorneys' fees, reimbursement of costs and Plaintiff service awards from **June 10, 2022 to June 24, 2022 at 9:30 a.m.**

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Very truly yours,



Joseph S. Tusa

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Eastern District of New York

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