

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

CHASE BARFIELD, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:11-cv-04321-NKL
)	
SHO-ME POWER ELECTRIC)	
COOPERATIVE, et al.,)	
)	
Defendants.)	

PLAN OF ALLOCATION

Before the Court is Plaintiffs’ proposed plan of allocation. The Court, being fully advised in the premises and for good cause shown, hereby ORDERS as follows:

A. Definition of Terms

1. For purposes of this Order:

a. “Claims Administrator” means the officer appointed by the Court pursuant to this Order (and any successor Claims Administrator appointed by the Court) to perform the duties set forth in this Order, to assist in the process of receiving claims from and disbursing the Net Class Award to Compensable Class Members, and to perform such incidental and additional duties as the Court may subsequently direct.

b. “Claims Center Director” means an officer appointed by the Court pursuant to this Order (and any successor Claims Center Director appointed by the Court) to perform the duties set forth in this Order, and to perform such incidental and additional duties as the Court may subsequently direct.

c. “Class” means the class certified and defined in this action by the Court under Rule 23(b)(3) as:

All persons who own or owned land in Missouri underlying Defendants’ electric-transmission lines that is burdened by an

easement with either Defendant or their subsidiaries, which easement does not contain an arbitration clause, and on or in which a Defendant has licensed the fiber optic cable for commercial-telecommunication uses or has used the fiber optic cable for commercial-telecommunication uses.

[Doc. 254.] Excluded from the Class are (1) KAMO Electric Cooperative, Inc., K-PowerNet, LLC, Sho-Me Power Electric Cooperative, and Sho-Me Technologies, LLC; (2) federal, state, and local governmental entities; (3) Native American nations and tribes; (4) U.S. District Judge Nanette K. Laughrey and any magistrate judge involved in this matter; (5) any person who owns or owned land only underlying public streets or highways; (6) any person who receives, directly from Sho-Me Power or Sho-Me Technologies, commercial communications service through a Communications System; (7) any person who filed a valid and timely exclusion from the action on or before September 8, 2014; and (8) any person whose claims were resolved through the KAMO-KPN Settlement Agreement approved by the Court on June 1, 2015 [Doc. 698].

d. “Class Counsel” means the attorneys appointed by the Court to represent the Class. [Doc. 254.]

e. “Compensable Class Members” means Class Members who owned Compensable Class Property any time between January 21, 2005 and February 2, 2015, *i.e.*, the time period of commercial telecommunications use of the fiber optic cable as stipulated at trial. [See Doc. 562 ¶12.]

f. “Compensable Class Property” means all property owned by a Class Member which is burdened by an electric transmission line easement granted or assigned to Sho-Me Power or Sho-Me Tech that falls within Category 1A, 1B, or 1C, as those terms are used in the Court’s summary judgment order. [Doc. 396.]

g. “Judgment Fund” means the sum of all compensatory damages awarded in the trial of the claims of the Compensable Class Members in this matter and allowed after

the Sho-Me Defendants' appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time), inclusive of such attorneys' fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to the Class, and inclusive of any interest earned through such investments as the Court may direct following the Sho-Me Defendants' payment of the judgment.

h. "Net Class Award" means the Judgment Fund less: (i) service awards to the Class representatives; (ii) fees, expenses, and costs awarded from the Judgment Fund to Class Counsel; (iii) compensation and expenses paid or reimbursed to the Claims Administrator or Claims Center Director; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court's direction.

B. Appointment of Claims Administrator and Claims Center Director

2. Garretson Resolution Group, Inc. is appointed Claims Administrator. Straup Solutions, LLC is appointed as Claims Center Director. The Claims Administrator and the Claims Center Director shall operate under the continuing supervision and jurisdiction of the Court and shall have the immunities and attributes of a judicial officer with respect to their administrative functions.

C. Duties of the Claims Administrator and Claims Center Director

3. The Claims Administrator and the Claims Center Director shall be responsible for working with Class Counsel to perform such duties as are necessary to administer the allocation of the Net Class Award under the guidelines set forth in this Order, under supervision from the Court, and subject to ultimate approval by the Court. Responsibilities will be divided among the Claims Administrator and the Claims Center Director in a manner that maximizes the accuracy and the efficiency of the claims process and is approved by the Court.

4. The Claims Administrator and the Claims Center Director shall have such additional duties in connection with the allocation of damages and administration of claims as are set forth in this Order or in subsequent directives from this Court.

5. The Claims Administrator shall report to the Court from time to time to advise the Court of its progress in discharging its responsibilities under this Order, on such occasions and at such intervals as the Claims Administrator may deem appropriate or as the Court may direct.

6. The Claims Administrator is authorized to make reasonable expenditures to secure the resources and assistance (including that of the Claims Center Director) reasonably necessary to the performance of its duties. Such expenses, and the compensation of the Claims Administrator and the Claims Center Director on terms to be agreed through separate contracts approved by the Court prior to the commencement of their duties, will be paid and reimbursed from the Judgment Fund periodically, as incurred.

7. The Claims Administrator and the Claims Center Director shall not commence the performance of their duties under this Order until such time as the case is remanded to this Court from the Sho-Me Defendants' appeal (or until after the expiration of the time allowed for filing such appeal, if no appeal is filed within that time). To the extent that either the Claims Administrator or the Claims Center Director wish to undertake preparation or planning prior to that time, they will only be compensated for their time if: (a) a claims process is required; and (b) the Court approves any proposed charges as reasonable, necessary, appropriate and in the best interest of the Class.

D. Procedures and Principles for the Proposed Allocation

8. With the assistance of Class Counsel, the Claims Center Director shall consult appropriate records and data from Missouri property and tax records and such other sources as the Claims Center Director may reasonably determine to be suitable and reliable for the purposes of compiling a list of county tax parcel identification numbers associated with Compensable Class Property.

9. Based on GIS and other data produced by the Sho-Me Defendants and any necessary additional review of Missouri property records and such other sources as the Claims Center Director may reasonably determine to be suitable and reliable, the Claims Center Director shall determine, for each Compensable Class Property, the number of linear feet of fiber-optic cable that transverses the property along a Category 1A, 1B, or 1C electric transmission line easement.

10. The Net Class Award shall be allocated pro rata among Compensable Class Members based on the number of linear feet of fiber-optic cable on their Compensable Class Property and on the temporal length of their ownership of such property during the period from January 21, 2005 to February 2, 2015.

11. In carrying out the allocation set forth in paragraph 10, the Claims Administrator shall compute a monthly per-foot share of the Net Class Award for each Compensable Class Property by (a) dividing the Net Class Award by 4,202,880 feet, the number of feet in the 796 miles stipulated to be the total distance of all Compensable Class Property [Doc. 562 ¶ 12]; then (b) dividing the resulting figure by 120 months, the rounded number of months of commercial telecommunications use stipulated by the parties before trial [*id.*]; and then (c) multiplying the resulting figure by the number of linear feet of fiber-optic cable transversing each Compensable Class Property.

E. Procedures for Payment of Claims

12. Prior to disbursement of any funds to Compensable Class Members, the Court will establish appropriate procedures for (a) notifying Compensable Class Members of the method by which their pro rata share of the Net Class Award will be calculated and the method for claiming such share; (b) notifying all other Class members that they do not qualify as Compensable Class Members; and (c) allowing other Class members to seek correction of any errors regarding whether they qualify as Compensable Class Members.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: August 21, 2015
Jefferson City, Missouri