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# If you purchased electric or gas service from Viridian Energy, you could get a payment from a class action settlement

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*A federal court authorized this Notice of Class Action Settlement.  
It is not a solicitation from a lawyer.*

*Contact the Settlement Administrator or the Lawyers for the Class listed below if you have any questions after reading this Notice. Do not contact the Court with questions.*

Read this Notice carefully, as your legal rights may be affected whether or not you respond.

<b>YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim Form</b>	<p>This is the only way you get a payment. <b><u>The Claim Form must be submitted by June 14, 2018.</u></b></p> <p>Submit an online Claim Form at <a href="http://www.VariableRateSettlement.com">www.VariableRateSettlement.com</a>. You can also download a Claim Form to submit by mail at <a href="http://www.VariableRateSettlement.com">www.VariableRateSettlement.com</a> or receive one by calling 1-855-887-3483. If you cannot find the postcard mailed to you call 1-855-887-3483.</p>
<b>Exclude Yourself</b>	<p>Get no payment. If you ask to be excluded you will not receive any benefits from this settlement. But you keep any rights to sue Viridian separately about the same legal claims in this lawsuit.</p>
<b>Object</b>	<p>Notify the Court if you have any objections to the settlement.</p>
<b>Do Nothing</b>	<p>Get no payment. Give up rights.</p>

- These rights and options – and the deadlines to exercise them – are explained in this Notice.
- Payments will be made if the Court approves the settlement and it becomes final. Please be patient.

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## **BASIC INFORMATION**

### **1. What Is This Notice?**

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This Notice describes the benefits available from a proposed settlement of a class action lawsuit, and your options. The company's records show that sometime between July 1, 2009 and December 31, 2016 you may have purchased your electricity or gas from Viridian Energy, Inc. or one of its related companies, Viridian Energy PA LLC, Viridian Energy NY, LLC, and Viridian Energy, LLC (referred to collectively in this Notice as "Viridian" or "Defendants").

If the Court approves the settlement and it becomes final, an administrator appointed by the Court will make the payments that the settlement provides.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### **2. What is this lawsuit about?**

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The class action lawsuit was brought on behalf of Viridian's energy customers and alleges that the company charged an excessive variable rate for gas and electricity regardless of fluctuations in the underlying wholesale market price. Separate class action lawsuits were filed both in Connecticut and Pennsylvania and allege that Viridian breached its contracts with customers and its duty of good faith and fair dealing, and also violated various consumer protection laws. Viridian denies any wrongdoing, and contends that its variable rates were adequately disclosed, consistent with its representations, and properly calculated based on the relevant market factors for electric and gas service.

### **3. Why is this brought as a class action?**

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In a class action, one or more people called "Class Representatives" sue for all people who have similar claims. Together, these people are called a "Settlement Class" or "Class Members." One court resolves the legal issues for all Class Members, except for those who exclude themselves from the Settlement Class.

### **4. Why is there a settlement?**

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After several years of litigation and more than a year of negotiations, the parties have agreed to a settlement in order to make monetary or other benefits available to Viridian's current and former energy customers. A settlement avoids the uncertainty, risks, and delay of litigation. Both the Class Representatives and their attorneys believe that the settlement is fair and in the best interests of the Class.

## WHO IS IN THE SETTLEMENT?

### 5. How do I know if I am part of the settlement?

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Class Members entitled to receive a monetary payment or credit benefit under the settlement include all current and former Viridian customers enrolled in a variable rate plan between July 1, 2009 and December 31, 2016.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 6. What does the settlement provide?

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This section describes the benefits available to each Class Member who submits a valid claim form for each gas and/or electric account with Viridian. Eligible claimants fall in one of two classes: “Average Usage Class Members” (customers with an average annual utilization rate of 25,000 or less kilowatt hours or 2,500 or less therms) and “Above-Average Usage Class Members” (customers with an average annual utilization rate of more than 25,000 kilowatt hours or more than 2,500 therms). Viridian’s records show that you were enrolled in a variable rate plan and are an Above Average Usage Class Member. If you timely submit a valid claim form or forms, your payment under the settlement depends on whether you are a gas or electric customer (or both), the amount of your energy usage, how long you were a Viridian customer, and whether you elect to receive a cash payment by check, or a credit on your future bills if you are a current Viridian customer or sign up again for energy service from Viridian.

The total aggregate value of the settlement from which cash settlement payments will be made is \$18,500,000. This amount will be used to pay Class Members’ “Cash Benefit Option” (described below), administration costs of the class action settlement, and attorneys’ fees and expenses. Should the total Calculated Loss of the valid claims filed by Average Usage Class Members and Above-Average Usage Class Members exceed the \$18.5 million settlement fund minus Court-approved fees and expenses, each claimant’s award will be reduced *pro rata*.

### The Settlement Amounts You Can Claim

#### *Cash Benefit Option*

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If you choose to receive a check (as opposed to a credit on your future bills), your cash benefit payment will be the following for each gas and/or electric account for which you submit a valid Claim Form:

A cash payment of the greater of \$10.00 or 65% of the “Calculated Amount” up to \$500.00 based upon a formula that compares the variable rate that you were charged by Viridian per kilowatt hour (for electricity) or therm (for gas) based on Viridian’s records, against a weighted average of the relevant utility’s Price to Compare during that same period of time, adjusting for, among other things, the cost for green energy and Viridian’s costs and margin (the “cash option”).

The “Calculated Amount” is the difference between the (i) actual payment made by each Class Member during the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or gas plan during the Class Period based on Viridian’s records (or reasonable, good-faith estimates where records are incomplete or inconsistent), and (ii) amount the Class Member would have paid during that same period if the Class Member paid the Price to Compare (“PTC”), plus one cent (\$0.01) per kilowatt hour/therm, plus a 20% margin. The PTC is a good faith estimate of the price that the customer’s relevant public utility would have charged for the supply portion of the electric or gas service, based on reasonably available information. The PTC will be based on a weighted average price per therm or kilowatt hour charged by the relevant public utility for the duration of the period in which the Class Member was enrolled in a Viridian variable rate electricity and/or natural gas plan during the Class Period. The one-cent addition reflects an estimated average premium charged by public utilities for green energy.

### ***Billing Credit Option***

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Class Members who are current customers at the time a Claim is made or former customers (who wish to re-enroll with Viridian) who have a Calculated Amount above zero dollars (\$0.00), shall be entitled in lieu of seeking a Cash Benefit, to a benefit of a credit of eight dollars and fifty cents (\$8.50) per month on their future Viridian energy bills for a maximum of twelve (12) months (*i.e.*, a maximum value of one hundred and two dollars (\$102.00)), to be credited at the end of the Settlement Class Member’s service period (or twelve (12) months, whichever comes first). Former Customers who elect this option must re-enroll within one-hundred-eighty (180) days from the end of the Claim Period. If you choose this option, but your Calculated Amount is zero dollars (\$0.00) or less, you will be provided the cash benefit option described above.

To find out more about both options, please visit [www.VariableRateSettlement.com](http://www.VariableRateSettlement.com) or call 1-855-887-3483.

## **HOW TO GET A PAYMENT – SUBMIT A CLAIM FORM**

### **7. How can I get a payment?**

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To qualify for payment, you must timely submit the Claim Form using the Class Member Identifier contained on the front of the post card(s) you received, or at the top of the email Notice you received. You can mail the Claim Form. You can also submit an online Claim Form at [www.VariableRateSettlement.com](http://www.VariableRateSettlement.com). If you want to download a claim form and mail it, you can download the Claim Form at [www.VariableRateSettlement.com](http://www.VariableRateSettlement.com) or receive one by calling 1-855-887-3483. If you cannot find the postcard mailed to you or the email sent call 1-855-887-3483.

You must submit your Claim Form online or by mail before June 14, 2018.

Incomplete or untimely Claim Forms will render you ineligible to receive any payment under the settlement. Payments will only be made if the Court approves the settlement and it becomes final.

By submitting a Claim Form, you are agreeing to release all Defendants from any potential claims you might have regarding your energy purchases from these companies.

## **8. What happens if I don't send in a Claim Form?**

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If you don't send in a Claim Form and don't exclude yourself from the settlement as described in the next section below, you will still be bound by all the terms of the settlement, including releasing any applicable federal and state law claims, and will not receive any payment from the settlement fund.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **9. What does excluding myself from the settlement mean?**

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If you don't want a payment or credits from the settlement, then you may exclude yourself (i.e. opt-out) from the settlement. To exclude yourself from the settlement, you must submit a statement to the Settlement Administrator with your name, address, and phone number stating "I/We request to be excluded from the Settlement Class and Settlement in the **Viridian Action**." To be considered valid, your opt-out statement must be returned to the Settlement Administrator at the above address so that it is postmarked or received on or before May 15, 2018.

If you choose to opt out of the settlement: (1) you will not get any settlement payment; and (2) you cannot object to the settlement. By opting out, you will not be legally bound by the settlement, and may still pursue your own claims against Viridian at your own expense if they are still timely under the applicable statute of limitations.

## **OBJECTING TO THE SETTLEMENT**

### **10. How can an objection be made?**

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If you fall within the definition of a Class Member set forth above, you may object to the settlement. You may not object to the Settlement if you exclude yourself from the lawsuit by opting out. To object, you must mail a written objection to the Settlement Administrator at: **Attention: James Prutsman, Sanborn v. Viridian Energy Settlement Administrator, PO Box 42779, Philadelphia, PA 19101-2779**. Do not file your objection with the Court.

Your objection must include (a) the name of the case, *Sanborn, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731; (b) your name, address, email, telephone number, and signature; (c) a statement of the nature of the objection, and the reasons and grounds for the objection; (d) copies of any papers you intend to present to the Court in support of the objection at the Fairness Hearing; (e) a statement of whether the objector intends to appear at the Final Approval Hearing, and, if the objector intends to appear at the Final Approval Hearing through hired counsel, then the identity of all attorneys representing the objector who will appear at the Final Approval Hearing; (f) a list

of all persons who will be called to testify in support of the objection, if any; (g) a statement of the objector's membership in the Settlement Class, including all the information required by the Claim Form; and (h) a detailed list of any other objections that the objector or his, her, or its counsel have submitted in any state or federal court during the previous five (5) years. If the objector or his, her, or its counsel have not objected to any other class action during the previous five (5) years, then the objector shall affirmatively state so in his, her, or its objection.

Your objection must be mailed so that it is received no later than May 15, 2018. You have the right to retain a lawyer at your own expense to file your objection. If your lawyer intends to appear at the Fairness Hearing, your lawyer must mail his/her notice of intention to appear before the Court to the Settlement Administrator at the address above. Do not file your intention to appear with the Court.

Members of the Settlement Class who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be entitled to be heard at the Final Fairness Hearing.

## **THE LAWYERS REPRESENTING YOU**

### **11. Who is Class Counsel**

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The Court has appointed the following lawyers as Class Counsel to represent you and the class of customers:

- Lead Class Counsel: Robert Izard, Craig Raabe, and Seth Klein of Izard, Kindall & Raabe, 29 South Main Street, Suite 305, West Hartford, CT 06107
  - (800) 797-5499
- Lead Class Counsel: Steven L. Wittels, J. Burkett McInturff, and Tiasha Palikovic of Wittels Law, P.C.
  - (914) 319-9945
- Class Counsel: Jonathan Shub of Kohn, Swift & Graf, P.C.
  - (215) 238-1700
- Class Counsel: Daniel Hymowitz and Andre Belenky of Hymowitz Law Group, PLLC.
  - (718) 807-9900
- Class Counsel: Richard Greenfield of Greenfield & Goodman LLC and Cuneo, Gilbert & LaDuca, LLP, P.C.
  - (917) 495-4446

Class Counsel have worked for more than three years without pay or any guarantee of obtaining a recovery for Viridian's current and former customers as described in this settlement notice. In a class action, it is customary for the attorneys representing the class to request a legal fee and reimbursement of expenses. Thus, Class Counsel will ask the Court for reimbursement of reasonable litigation costs and service awards for the class representatives in an amount up to 24% (\$4,500,000). The award of fees and expenses will be applied against and reduce the \$18,500,000

settlement amount. Class Counsel will ask the Court to authorize service awards of \$5,000 to each of the named Class Representatives for their significant contributions in bringing this action and providing important information used to achieve the settlement. The service awards are also in recognition of the risks these individuals took in coming forward publicly. The service awards will be paid from any award of Class Counsels' attorneys' fees and expenses.

## THE FAIRNESS HEARING

### 12. What is a Fairness Hearing?

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The Court will hold a final Fairness Hearing on the fairness and adequacy of the proposed settlement and its terms, on June 25, 2018 at 10:00 a.m. before the Honorable Stefan R. Underhill of the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Bridgeport, Connecticut 06604. *You do not have to appear at this Fairness Hearing.*

## GETTING MORE INFORMATION

### 13. How do I get more information about the settlement?

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You can contact the Settlement Administrator 1-855-887-3483; or you may visit the website at [www.VariableRateSettlement.com](http://www.VariableRateSettlement.com) where you will find the Claim Form, important pleadings (such as the complaint), the full Settlement Agreement, and answers to frequently asked questions about the settlement.

You may also contact Lead Class Counsel listed above with any questions. Lead Class Counsel may be contacted as follows:

Seth R. Klein, Esq.  
IZARD, KINDALL & RAABE, LLP  
29 South Main Street, Suite 305  
West Hartford, CT 06107

Steven L. Wittels, Esq.  
WITTELS LAW, P.C.  
18 Half Mile Road  
Armonk, New York 10504

You can also review the full court file for *Sanborn, et al. v. Viridian Energy, Inc.*, Civil Action No. 3:14-cv-01731, during regular business hours in the Clerk's Office at 915 Lafayette Boulevard, Bridgeport, Connecticut 06604.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR  
VIRIDIAN ENERGY WITH INQUIRES ABOUT THE SETTLEMENT**