

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

**If You are a Commercial or Industrial Entity that Bought Natural Gas in Wisconsin, A Class Action Settlement May Affect You.**

**You or your company may have purchased natural gas for your own use or consumption in Wisconsin from January 1, 2000 through October 31, 2002.**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

- Class action lawsuits brought on behalf of certain commercial and industrial purchasers of natural gas for their own use or consumption in Wisconsin during the period from **January 1, 2000 to October 31, 2002** (the “Class Period”) are currently pending in the United States District Court for the Western District of Wisconsin.
- The lawsuits allege that Defendants (listed below) and co-conspirators engaged in an unlawful agreement or conspiracy to manipulate the prices of natural gas during the Class Period. Plaintiffs further claim that certain commercial and industrial purchasers who purchased natural gas other than from utilities or local distribution companies and for their own use or consumption in Wisconsin may recover for the effect that the alleged conspiracy had on the prices of the natural gas they purchased. Plaintiffs allege that, as a result of the unlawful conspiracy, they and other commercial and industrial purchasers paid more for natural gas than they would have absent the conspiracy. Defendants deny Plaintiffs’ claims.
- A new settlement has been reached with the following: Cantera Gas Company, LLC (f/k/a CMS Field Services, Inc.), CMS Energy Corporation, and CMS Energy Resource Management Company (f/k/a CMS Marketing Services & Trading Company) (collectively, “CMS”).
- This is the third notice in this case. The first notice involved settlements in Kansas, Missouri, and Wisconsin with American Electric Power Company, Inc., and certain of its affiliates; Coral Energy Resources, LP, and certain of its affiliates; Duke Energy Carolinas, LLC, and certain of its affiliates; and ONEOK, Inc., and certain of its affiliates. The second notice involved two additional settlements, for natural gas purchases in Wisconsin only, with El Paso Corporation and certain of its affiliates, and CenterPoint Energy Services, Inc. This new notice concerns an additional settlement that has now been reached with CMS.
- Your legal rights may be affected whether you act or don’t act. This Notice includes information on the settlement and the lawsuits. Please read the entire Notice carefully.

**These rights and options—and deadlines to exercise them—are explained in this Notice**

You can object to or comment on the settlement.....see Question 9

You may exclude yourself from the settlement .....see Question 9

You may go to a hearing and comment on the settlement .....see Question 12

- The Court in charge of this case still has to decide whether to approve the settlement.

## WHAT THIS NOTICE CONTAINS

<b>Basic Information</b> .....	Page 2
1. Why did I get this Notice?	
2. Who are the Defendant companies?	
3. What is this litigation about?	
4. Why are there settlements but the litigation is continuing?	
5. What is a class action?	
<b>The Settlement Class</b> .....	Page 3
6. How do I know if I'm part of the Wisconsin Settlement Class?	
7. What does the settlement provide?	
8. When can I get a payment?	
9. What are my rights related to the Wisconsin Settlement Class?	
10. What if I am part of the prior CMS Settlement Classes in Kansas or Missouri?	
11. What am I giving up to stay in the Wisconsin Settlement Class?	
<b>The Settlement Approval Hearing</b> .....	Page 6
12. When and where will the Court decide whether to approve the settlement?	
13. Do I have to attend the hearing?	
<b>The Lawyers Representing You</b> .....	Page 7
14. Do I have a lawyer in the litigation?	
15. How will the lawyers be paid?	
<b>The Lawyers Representing CMS</b> .....	Page 8
16. Who represents CMS?	
<b>Getting More Information</b> .....	Page 8
17. How do I get more information?	

## BASIC INFORMATION

### 1. Why did I get this Notice?

Your company may have purchased natural gas for use in Wisconsin between January 1, 2000 to October 31, 2002.

You have the right to know about the litigation and about your legal rights and options before the Court decides whether to approve the settlement.

The Notice explains the litigation, the settlement, and your legal rights.

The Court in charge of the litigation is the United States District Court for the Western District of Wisconsin, and the case is called *Arandell Corporation, et al. v. Xcel Energy, Inc., et al.*, Case No: 3:07-cv-00076-wmc (W.D. Wis.) and *NewPage Wisconsin System Inc. v. CMS Energy Resource Management Company, et al.*, Case No: 3:09-cv-00240-wmc (W.D. Wis.). The people who sued are called Plaintiffs and the companies they sued are called Defendants.

## **2. Who are the Defendant companies?**

In addition to CMS, Defendant companies originally sued include: American Electric Power Company, Inc. and AEP Energy Services, Inc. (collectively, “AEP”); CenterPoint Energy Services, Inc. (“CenterPoint”); Coral Energy Resources, L.P. (n/k/a Shell Energy North America (U.S.), L.P.) (“Coral”); Duke Energy Carolinas, LLC (f/k/a/ Duke Energy Corporation) and Duke Energy Trading and Marketing, L.L.C. (collectively, “Duke”); El Paso Corporation (n/k/a El Paso LLC) and El Paso Merchant Energy, L.P. (n/k/a El Paso Marketing Company, L.L.C.) (collectively, “El Paso”); ONEOK, Inc., ONEOK Energy Services Company, L.P. (f/k/a ONEOK Energy Marketing & Trading Company, L.P.), and Kansas Gas Marketing Company (collectively, “ONEOK”); Dynegy Marketing and Trade, DMT G.P. LLC, Dynegy Illinois, Inc., and Dynegy GP, Inc. (collectively, “Dynegy”); ePrime, Inc., Xcel Energy, Inc., and Northern States Power Company (collectively, “ePrime”); Reliant Energy, Inc. and Reliant Energy Services, Inc. (collectively, “Reliant”); and The Williams Companies, Inc., Williams Energy Marketing & Trading Company, Williams Merchant Services Company, Inc., and Williams Power Company, Inc. (collectively, “Williams”).

## **3. What is this litigation about?**

The lawsuits allege that Defendants and co-conspirators engaged in an unlawful arrangement, combination, agreement, or conspiracy to manipulate, fix, raise, maintain, or stabilize the prices of natural gas. Plaintiffs further claim that certain commercial and industrial purchasers who purchased natural gas in Wisconsin from sellers other than utilities or local distribution companies may recover for the effect that the alleged conspiracy had on the prices of the natural gas they purchased. Plaintiffs allege that, as a result of the combined or collusive conduct, they and other purchasers paid more for natural gas than they would have absent the conspiracy. Defendants deny all of Plaintiffs’ allegations and claims. The Court has not decided who is right.

## **4. Why are there settlements but the litigation is continuing?**

The Court previously approved settlements with other defendant groups: AEP, Coral, Duke, El Paso and ONEOK in Kansas, Missouri, and Wisconsin, and CenterPoint in Wisconsin only. CMS has now agreed to settle the pending lawsuits in Wisconsin. CMS has reached a settlement with respect to claims based on purchases in Wisconsin. This notice does not relate to any claims you might have against any of the Defendants for purchases made in Kansas, Missouri, or any state other than Wisconsin. The case is also continuing against the remaining Defendants. Additional money may become available in the future as a result of a trial or future settlements, but there is no guarantee that this will happen.

## **5. What is a class action?**

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are members of the class, except for those who exclude themselves from the class.

Important information about the case will be posted on the website, **[www.NaturalGasAntitrustSettlement.com](http://www.NaturalGasAntitrustSettlement.com)** (the “Settlement Website”) as it becomes available. Please check the website to be kept informed about any future developments.

## **THE SETTLEMENT CLASS**

## **6. How do I know if I’m part of the Wisconsin Settlement Class?**

Your company may be a member of the following Settlement Class:

## Wisconsin Settlement Class

The “Wisconsin Settlement Class” consists of all industrial and commercial purchasers of natural gas for their own use or consumption during the period from January 1, 2000 until October 31, 2002, and which gas was used or consumed by them in Wisconsin. Excluded from the Wisconsin Settlement Class are (a) entities that purchased natural gas for resale (to the extent of such purchase for resale); (b) entities that purchased natural gas for generation of electricity for the purpose of sale (to the extent of such purchase for generation); (c) entities that purchased natural gas at rates approved by the Wisconsin Public Service Commission (to the extent of such purchases at such approved rates); (d) defendants and their predecessors, affiliates and subsidiaries; and (e) the federal government and its agencies.

### **7. What does the settlement provide?**

The settlement provides a total of \$15 million in cash, plus accrued interest (the “Settlement Fund”), before court-approved deductions for attorneys’ fees and expenses.

In addition, CMS’s sales remain in the case for the purpose of computing damages against the remaining Defendants, but those damages may be offset by credits for this settlement and settlements with other Defendants that settle.

More details are in the Settlement Agreement, available at [www.NaturalGasAntitrustSettlement.com](http://www.NaturalGasAntitrustSettlement.com).

### **8. When can I get a payment?**

Funds from the Settlement Fund will be distributed to Class Members after the Court grants final approval for the settlement. At that time, claim forms will be distributed to Class Members for whom mailing addresses are available, and advertisements will be placed in newspapers and business publications giving notice that the Class Members can submit a claim, online or by mail, to receive a portion of the Settlement Fund. Once the claims period is complete, settlement funds will be allocated on a pro rata basis based on the volume of natural gas that each participating Class Member purchased in proportion to the total volume of all claims filed.

You will be notified in the future when and where to send a claim form. **DO NOT SEND ANY CLAIMS NOW.**

### **9. What are my rights related to the Wisconsin Settlement Class?**

**A. Remain in the Wisconsin Settlement Class:** If you wish to remain a member of the Wisconsin Settlement Class, you do not need to take any action at this time.

**B. Get out of the Wisconsin Settlement Class:** If you wish to keep any of your rights to sue CMS about claims concerning the sale of natural gas during the Class Period, other than claims for product liability, personal injury, or breach of contract claims not related to the allegations in this litigation, you must exclude yourself from the Wisconsin Settlement Class. If you exclude yourself from the Wisconsin Settlement Class, you will not get any money from the settlement, and you may not intervene as a party plaintiff in any of the Wisconsin Actions.

To exclude yourself from the Wisconsin Settlement Class, you must send a letter that includes the following:

- 1) The name, address, and telephone number of the person or entity seeking exclusion;

- 2) All trade names or business names and addresses that the person or entity seeking exclusion (and any of his, her, or its parents, subsidiaries, affiliates, predecessors, or assignors who purchased, used, or consumed natural gas during the Class Period) has used during or since the Class Period;
- 3) With respect to natural gas purchased, used, or consumed in Wisconsin during the Class Period by any of the entity(ies) listed in sub-parts 1) or 2) above, the names of all entities from or through whom such natural gas was purchased, an estimate of the total dollar amount paid for such natural gas in Wisconsin, and an estimate of the total volume of such natural gas purchased in Wisconsin;
- 4) The case names of the Wisconsin Actions (*Arandell Corporation, et al. v. Xcel Energy, Inc., et al.*, Case No: 3:07-cv-00076-wmc (W.D. Wis.) and *NewPage Wisconsin System Inc. v. CMS Energy Resource Management Company, et al.*, Case No: 3:09-cv-00240-wmc (W.D. Wis.));
- 5) The statement that “[name of person or entity] and all of its parents, subsidiaries, and affiliates hereby request to be excluded from the proposed class settlement described in the notice of settlement pertaining to the Actions;”
- 6) The title or position of the person signing on your behalf, and a statement that the person is duly authorized to sign on your behalf; and
- 7) The signature of the duly authorized person identified in subpart (6).

You must mail your exclusion request, **postmarked no later than July 16, 2020**, to:

Natural Gas Claims Administrator  
c/o A.B. Data, LTD.  
ATTN: Exclusions  
PO Box 173001  
Milwaukee, WI 53217-8091

**C. Remain in the Wisconsin Settlement Class and Object:** You can ask the Court to deny approval of the settlement or otherwise object to the terms of the settlement by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or disapprove the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuits against CMS will continue. If that is what you want to happen, you must object. If you object, Settlement Class Counsel will not be able to represent you concerning your objection. It will be your responsibility to assert your objection individually or through counsel that you hire at your own cost.

You may object to the proposed settlement in writing. You may also appear at the Fairness Hearing, either in person or through your own attorney. In order to appear at the Fairness Hearing, you must first provide written notice of your intention to appear. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must include (a) a notice of intention to appear; (b) proof of membership in the Wisconsin Settlement Class; (c) the specific grounds for the objection and any reasons why you desire to appear and be heard, and (d) all documents or writings that you want the Court to consider.

**Any such objection must be mailed to the United States District Court for the Western District of Wisconsin on or before July 7, 2020. The Court's address is: Clerk of Court, U.S. District Court, Western District of Wisconsin, 120 North Henry Street, Room 320, Madison, WI 53703, with reference to Natural Gas Settlement, Case Nos. 07-cv-76-wmc, 09-cv-240-wmc.**

**D. You cannot both Object to and Exclude yourself from the Settlement:** Objecting means you are telling the Court that you want to be part of the Wisconsin Settlement Class but disagree with

something about the settlement terms. You can only object if you intend to stay in the Wisconsin Settlement Class and be bound by the settlement with CMS if approved by the Court. Excluding yourself, on the other hand, is telling the Court you do not want to be part of the Wisconsin Settlement Class or the settlement. If you exclude yourself, you have no basis to object because the settlement no longer affects you. Thus, you cannot both exclude yourself from the Wisconsin Settlement Class and object to the settlement.

#### **10. What if I am part of the prior CMS Settlement Classes in Kansas or Missouri?**

If you are a member of the prior settlement classes involving CMS in Kansas and Missouri, your rights concerning those classes are not affected by this notice or this settlement. This notice concerns only the Wisconsin Settlement Class and the claims of Class Members against CMS for purchases in Wisconsin.

#### **11. What am I giving up to stay in the Wisconsin Settlement Class?**

Unless you exclude yourself from the Wisconsin Settlement Class, you can't sue CMS, or be part of any other lawsuit against CMS, about the alleged misconduct or legal issues in these lawsuits.<sup>1</sup> It also means that all of the decisions by the Court will bind you. As described in the Settlement Agreement, once the settlement becomes Final, Releasees shall be completely released, acquitted, and forever discharged by Releasors from any and all claims, demands, actions, suits, causes of action for injuries, losses, expenses, damages (including full consideration damages, penalties, or punitive damages), or other consequences of every nature (whether known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated, legal or equitable) that Releasors or any of them ever had, now has, or hereafter can, shall, or may have in any capacity (whether class, individual, direct, indirect, derivative, representative, or any other capacity) up through the date that the Court grants preliminary approval of the settlement, on account of, arising out of, or relating in any way to: (i) the price(s) paid by Releasors for their purchases of natural gas, whether direct or indirect, during the Class Period for use or consumption in Wisconsin (the "Purchases"); (ii) the facts, circumstances, claims, or allegations asserted in the Wisconsin Actions or the Related Actions (other actions, with which the Wisconsin Actions were formally centralized as part of MDL NO. 1566) against Releasees, or any current, former or future defendant or alleged co-conspirator of the Releasees; (iii) any alleged violations of federal or state antitrust law by Releasees, including but not limited to Wis. Stat. § 133.01 *et seq.*, arising out of or related in any way to the Purchases; or (iv) the facts, circumstances, claims or allegations that were or could have been asserted in the Wisconsin Actions or the Related Actions against Releasees (the "Released Claims"). The Released Claims do not preclude Plaintiffs from pursuing, and Plaintiffs specifically reserve all rights to continue to pursue, any and all claims as set forth in the operative complaints or as permitted by law against any other Defendants in the Wisconsin Actions other than the Releasees. The Released Claims do not impede Plaintiffs' rights to pursue claims against any non-settling Defendant or other entity, other than the Releasees, to recover for the full amount of Plaintiffs' and Class Members' damages arising from the collusive conduct alleged in the operative complaints.

The Releases and all related terms are contained in the Settlement Agreement, which is available at [www.NaturalGasAntitrustSettlement.com](http://www.NaturalGasAntitrustSettlement.com).

### **THE SETTLEMENT APPROVAL HEARING**

#### **12. When and where will the Court decide whether to approve the settlement?**

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<sup>1</sup> This does not affect any claims or rights you might have related to any qualifying purchases in Kansas or Missouri.

The Court will hold a Fairness Hearing at **1:00 p.m. on August 6, 2020** at the Courtroom of the Honorable William M. Conley, United States District Court, 120 N. Henry Street, Madison, Wisconsin 53703. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for information. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long it will take for the Court to make these decisions.

### **13. Do I have to attend the hearing?**

No. Settlement Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you file or mail an objection, you don't have to come to Court to talk about it. As long as you filed or mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

## **THE LAWYERS REPRESENTING YOU**

### **14. Do I have a lawyer in the litigation?**

Yes. The Court has appointed the law firms of Kohner, Mann & Kailas, S.C., Perkins Coie LLP and Polsinelli PC, to represent the members of the Wisconsin Settlement Class (collectively, "Settlement Class Counsel"). You do not have to pay Settlement Class Counsel, although the settlement provides for an award of fees and costs out of the Settlement Fund. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you may hire one at your own expense. The contact information for Settlement Class Counsel is as follows:

<b>SETTLEMENT CLASS COUNSEL</b>	
Robert L. Gegios Kohner, Mann & Kailas, S.C. 4650 N. Port Washington Road Milwaukee, WI 53212 rgegios@kkmksc.com	Christopher G. Hanewicz Perkins Coie LLP 33 East Main Street, Suite 201 Madison, WI 53703 chanewicz@perkinscoie.com
Russell S. Jones Polsinelli PC 900 W. 48 <sup>th</sup> Place, Suite 900 Kansas City, MO 64112 rjones@polsinelli.com	

### **15. How will the lawyers be paid?**

Under the terms of the Settlement Agreement, Settlement Class Counsel will ask the Court for reimbursement of a portion of the costs and expenses they incurred in pursuit of claims on behalf of the Settlement Classes, and will request an award of attorneys' fees not to exceed thirty-five percent (35%) of that portion of the Settlement Fund remaining after reimbursement of costs and expenses. Settlement Class Counsel may also request that an amount be paid to each of the Class Representatives who helped the lawyers on behalf of the whole Class (known as an "incentive award").

## THE LAWYERS REPRESENTING CMS

### 16. Who represents CMS?

T. Robert Scarborough  
Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
tscarborough@sidley.com

## GETTING MORE INFORMATION

### 17. How do I get more information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement, which is available at **[www.NaturalGasAntitrustSettlement.com](http://www.NaturalGasAntitrustSettlement.com)** and can be obtained by contacting Settlement Class Counsel using the information listed above under Question 14.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Dated: April 16, 2020

BY ORDER OF THE COURT