

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

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

**You or your company may have purchased natural gas from e prime Energy Marketing, Inc. or Xcel Energy Inc. for your own use or consumption in Colorado from January 1, 2000 through October 31, 2002.**

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

- A class action lawsuit brought on behalf of certain commercial and industrial purchasers of natural gas for their own use or consumption in Colorado 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 District of Colorado.
- The lawsuit alleges 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 from e prime Energy Marketing, Inc. or Xcel Energy Inc. and for their own use or consumption in Colorado may recover for the effect that the alleged conspiracy had on the prices of the natural gas they purchased. Plaintiffs allege that, as 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.
- Settlements have been reached with e prime Energy Marketing, Inc. and Xcel Energy Inc. (collectively, “e prime” or the “Settling Defendants”).
- Your legal rights may be affected whether you act or don't act. This Notice includes information on the settlement and the lawsuit. 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 8

You may exclude yourself from the settlement..... see Question 8

You may go to a hearing and comment on the settlement..... see Question 8

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

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## BASIC INFORMATION

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

You or your company may have purchased natural gas from the Settling Defendants for use in Colorado 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 case is the United States District Court for the District of Colorado, and the case is called *Breckenridge Brewery of Colorado, LLC, et al. v. ONEOK, Inc., et al.*, Case No. 1:06-01110-REB-MEH, pending in the United States District Court for the District of Colorado (the “Action”). The people who sued are called Plaintiffs and the companies they sued are called Defendants.

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

The Defendant companies include: e prime Energy Marketing, Inc. and Xcel Energy Inc. (collectively, “ePrime”).

The co-conspirator entities include, among others, 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”); 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”); CMS Energy Corporation, CMS Field Services, Inc., and CMS Marketing, Services and Trading Company (collectively, “CMS”); Dynegy Marketing and Trade, DMT G.P. LLC, Dynegy Illinois, Inc., and Dynegy GP, Inc. (collectively, “Dynegy”); El Paso Merchant Energy, L.P. (n/k/a El Paso Marketing Company, L.L.C.) and El Paso Corporation (n/k/a El Paso LLC) (collectively, “El Paso”); 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 lawsuit alleges that Settling 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 Colorado from the Settling Defendants may recover for the effect that the alleged conspiracy had on the prices of the natural gas they purchased. Plaintiffs allege that, as 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. 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)** as it becomes available. Please check the website to be kept informed about any future developments.

## **THE SETTLEMENT CLASS**

## **5 How do I know if I'm part of the Settlement Class?**

You or your company may be a member of the following Settlement Class:

All industrial and commercial purchasers of natural gas for their own use or consumption that bought from defendants Xcel Energy Inc. or e prime Energy Marketing, or their corporate affiliates during the period from January 1, 2000 through October 31, 2002, and which gas was used or consumed by them in Colorado. Excluded from the Class are (a) entities that purchased natural gas for resale (to the extent of such purchase(s) for resale); (b) entities that purchased natural gas for generation of electricity for the purpose of sale (to the extent of such purchase(s) for generation); (c) defendants and their predecessors, affiliates, and subsidiaries; (d) the federal government and its agencies; and (e) Reorganized FLI, Inc. (f/k/a and successor to Farmland Industries, Inc.).

**6. What does the settlement provide?**

The settlement provides a total of \$2,500,000.00 in cash, plus accrued interest (the “Settlement Fund”), before court-approved deductions for attorneys’ fees and expenses.

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

**7. When can I get a payment?**

Funds from the Settlement Fund will be distributed to Class Members only after the Court grants final approval for the settlement. At that time, claim forms will be distributed to Class Members for which 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 qualifying participating Class Member purchased in proportion to the total claims filed.

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

**8. What are my rights related to the Settlement Class?**

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

**B. Get out of the Settlement Class:** If you wish to keep any of your rights to sue any of the Settling Defendants 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 Settlement Class and the settlement. If you exclude yourself from the Settlement Class, you will not get any money from the settlement. If you exclude yourself from the Settlement Class, you may not intervene as a party plaintiff in the Action.

To exclude yourself from the 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 within Colorado from the Settling Defendants between January 1, 2000 and October 31, 2002 by any of the person(s) and entity(ies) listed in sub-parts 1) or 2) above, the names of all entities from or through whom such natural gas was purchased, and an estimate of the total dollar amount paid for such natural gas or an estimate of the total volume of such natural gas purchased;
- 4) The case name of the Action (*Breckenridge Brewery of Colorado, LLC, et al. v. ONEOK, Inc., et al.* (D. Colo.));
- 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 Action;”
- 6) If you are a business entity, identify the title or position of the person signing on your behalf, and state that the person is duly authorized to sign on your behalf; and
- 7) Your signature or the signature of the duly authorized person identified in subpart 6).

You must mail your exclusion request, postmarked no later than May 11, 2021, to:

Natural Gas Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173001  
Milwaukee, WI 53217

**C. Remain in the Settlement Class and Object:** You can ask the Court to deny approval 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 lawsuit against the Settling Defendants 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 Final Approval Hearing, either in person or through your own attorney. In order to appear at the Final Approval 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 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 both filed with the United States District Court for the District of Colorado on or before May 11, 2021, and mailed to Class Counsel or the Settlement Administrator (identified below), and to counsel for each of the Settling Defendants (identified below), and postmarked by May 11, 2021.**

**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 Settlement Class but disagree with something about the settlement terms. You can only object if you intend to stay in the Settlement Class, and be bound by the settlement with the Settling Defendants if approved by the Court. Excluding yourself, on the other hand, is telling the Court you do not want to be part of the 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 Settlement Class and object to the settlement.

## **9. What if I purchased natural gas in other states?**

This settlement relates only to purchases of natural gas from the Settling Defendants in Colorado. Defendant Xcel Energy Inc. and its affiliate, e prime, inc., remain defendants in a similar case pending in the United States District Court for the Western District of Wisconsin. Neither Xcel Energy Inc. nor e prime, inc. have settled any claims related to natural gas purchases in Wisconsin, and any rights you may have regarding any Wisconsin purchases are unaffected by this settlement.

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

Unless you exclude yourself from the Settlement Class, you can't sue any of the Settling Defendants, or be part of any other lawsuit against any of the Settling Defendants, about the alleged misconduct or legal issues in this lawsuit.<sup>1</sup> It also means that all of the decisions by the Court will bind you. As described in the Settlement Agreement, upon the Effective Date of Settlement, each of the 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, 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

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

(whether class, individual, direct, derivative, representative, or any other capacity) on account of, or in any way arising out of, or relating in any way to any act or omission of the Releasees or the other named defendants/alleged co-conspirators or any third-party alleged co-conspirators (or any of them) that is alleged in the Action up to the date of the execution of the Settlement Agreement or that could have been alleged in the Action or in any other proceeding alleging such acts or omissions (the “Released Claims”). The Released Claims shall not impede or affect in any way the Parties’ claims or defenses in the Wisconsin Actions.<sup>2</sup> Under the terms of the Settlement Agreement, Releasors are prohibited from suing or otherwise seeking to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims or conduct alleged in the Action.

The Release 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**

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

The Court will hold a Fairness Hearing at **1:30 p.m. on July 22, 2021**, at the Alfred A. Arraj U.S. Courthouse, U.S. District Court, District of Colorado, 901 19th Street, Denver, Colorado 80294. 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 these decisions will take.

### **12. 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**

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

Yes. The Court has appointed the law firms of Polsinelli PC and Barry Law Office, LLC, to represent the members of the Colorado Settlement Class (collectively, “Settlement Class Counsel”). You do not have to pay Settlement Class Counsel. 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>	
Russell S. Jones, Jr. Andrew J. Ennis Polsinelli PC 900 W. 48 <sup>th</sup> Place, Suite 900 Kansas City, Missouri 64112 <a href="mailto:rjones@polsinelli.com">rjones@polsinelli.com</a> <a href="mailto:aennis@polsinelli.com">aennis@polsinelli.com</a>	Donald D. Barry Barry Law Office 5340 S.W. 17th Street P.O. Box 4816 Topeka, Kansas 66604 <a href="mailto:dbarry@inlandnet.net">dbarry@inlandnet.net</a>

<sup>2</sup> “Wisconsin Actions” is specifically defined in the Settlement Agreement.  
Questions? Visit [www.NaturalGasAntitrustSettlement.com](http://www.NaturalGasAntitrustSettlement.com) or call 877-883-8112.

**14. 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 Class, 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 a "service award").

**THE LAWYERS REPRESENTING THE SETTLING DEFENDANTS**

**15. Who represents the Settling Defendants?**

<b>SETTLING DEFENDANTS' COUNSEL</b>	
Kathryn Reilly Wheeler Trigg O'Donnell LLP 370 17 <sup>th</sup> Street, Suite 4500 Denver, CO 80202 reilly@wtotrial.com	Michael John Miguel McKool Smith P.C. 300 South Grand Avenue, Suite 2900 Los Angeles, CA 90071 mmiguel@mckoolsmithhennigan.com

**GETTING MORE INFORMATION**

**16. 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 13.

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

Dated: March 12, 2021

BY ORDER OF THE COURT

Natural Gas Claims Administrator  
c/o A.B. Data, Ltd.  
P.O. Box 173120  
Milwaukee, WI 53217

**COURT-APPROVED NOTICE REGARDING**  
Natural Gas Colorado