

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IN RE WESTERN STATES WHOLESALE)	MDL Docket No. 1566
NATURAL GAS ANTITRUST)	
LITIGATION)	Base Case No. 2:03-cv-01431-RCJ-PAL

)	
THIS DOCUMENT RELATES TO:)	
<i>Learjet, Inc., et al. v. ONEOK Inc., et al.</i>)	Case No. 2:06-cv-00233-RCJ-PAL
<i>Heartland Regional Medical Center, et al. v. ONEOK Inc., et al.</i>)	Case No. 2:07-cv-00987-RCJ-PAL
<i>Arandell Corp., et al. v. Xcel Energy, Inc., et al.</i>)	Case No. 2:07-cv-01019-RCJ-PAL
<i>NewPage Wisconsin System Inc. v. CMS Energy Resource Management Co., et al.</i>)	Case No. 2:09-cv-00915-RCJ-PAL

[PROPOSED] ORDER PRELIMINARILY CERTIFYING SETTLEMENT CLASSES, APPROVING CLASS SETTLEMENT, APPROVING CLASS NOTICE AND SETTING DATE FOR FAIRNESS HEARING

The motion of the Plaintiffs in above-captioned actions (the “Actions”) for preliminary approval of the terms and conditions (the “Settlements”) in the following Settlement Agreements (collectively, the “Agreements”) came before this Court on January 26, 2017:

- (i) the Settlement Agreement dated July 22, 2016 entered into between Plaintiffs and defendants Duke Energy Carolinas, LLC and Duke Energy Trading and Marketing L.L.C. (the “Duke Defendants”);
- (ii) the Settlement Agreement dated September 1, 2016 entered into between Plaintiffs and defendants American Electric Power Company, Inc. and AEP Energy Services, Inc. (the “AEP Defendants”);
- (iii) the Settlement Agreement dated September 1, 2016 entered into between Plaintiffs and defendant Coral Energy Coral Energy Resources, L.P., as succeeded by Shell Energy North America (US), L.P. through merger (“Coral”); and

1 (iv) the Settlement Agreement dated September 1, 2016 entered into between Plaintiffs,
2 and defendants ONEOK, Inc. and ONEOK Energy Services Company, L.P. (f/k/a
3 ONEOK Energy Marketing & Trading Company, L.P.) and previously dismissed
4 defendant Kansas Gas Marketing Company (the “ONEOK Defendants”).

5 The Duke Defendants, the AEP Defendants, Coral and the ONEOK Defendants are
6 hereinafter referred to collectively as the “Settling Defendants.” Plaintiffs and the Settling
7 Defendants are hereinafter referred to collectively as the “Parties.”

8 As reflected in the Court’s January 26, 2017 Minutes of Proceedings, entered on January 31,
9 2017 (Dkt. #2787), the Court, after carefully considering the motion and all papers filed and
10 proceedings held herein, including the Agreements and proposed Notice Plan, for good cause
11 HEREBY FINDS AND ORDERS THE FOLLOWING:

12 1. The Parties include plaintiffs Learjet, Inc., Topeka Unified School District 501,
13 Heartland Regional Medical Center, Prime Tanning Corp., Northwest Missouri State University,
14 Arandell Corporation, Merrick’s Inc., Sargento Foods Inc., Ladish Co. Inc., Carthage College,
15 Briggs & Stratton Corporation, and NewPage Wisconsin System, Inc. (collectively hereinafter,
16 “Plaintiffs”), both individually and on behalf of proposed settlement classes of industrial and
17 commercial purchasers of natural gas for their own use or consumption in the States of Kansas,
18 Missouri, and Wisconsin, as more particularly defined in Paragraph 3 of this Order, and other
19 affiliated Releasors defined in the Agreements, along with the Settling Defendants and other
20 affiliated Releasees as defined in the Agreements.

21 2. The Agreements are incorporated by reference in this Order. All terms which are
22 defined in the Agreements and used but not otherwise defined herein shall have the meanings
23 ascribed to them in the Agreements.

24 3. For purposes of determining whether the Agreements should be preliminarily
25 approved, the Court conditionally certifies, for purposes of settlement only, pursuant to Rules 23(a)
26 and (b)(3) of the Federal Rules of Civil Procedure 23(b)(3), the Classes defined as follows:

27 (a) “Kansas Class” means:
28 All industrial and commercial direct purchasers of natural gas for their
own use or consumption during the period from January 1, 2000

1 through October 31, 2002, and which gas was used or consumed by
2 them in Kansas. Excluded from the Class are (a) entities that
3 purchased natural gas for resale (to the extent of such purchase(s) for
4 resale); (b) entities that purchased natural gas for generation of
5 electricity for the purpose of sale (to the extent of such purchase(s) for
6 generation); (c) defendants and their predecessors, affiliates, and
7 subsidiaries; (d) the federal government and its agencies; and (e)
8 Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

9 For purposes of the Kansas Class definition, a “direct purchaser”
10 means an industrial or commercial entity that bought natural gas for its
11 own use or consumption directly from any of the defendants in the
12 Actions, or from a seller other than a local distribution company.

13 (b) “Missouri Class” means:

14 All industrial and commercial direct purchasers of natural gas for their
15 own use or consumption during the period from January 1, 2000
16 through October 31, 2002, and which gas was used or consumed by
17 them in Missouri. Excluded from the Class are (a) entities that
18 purchased natural gas for resale (to the extent of such purchase(s) for
19 resale); (b) entities that purchased natural gas for generation of
20 electricity for the purpose of sale (to the extent of such purchase(s) for
21 generation); (c) defendants and their predecessors, affiliates, and
22 subsidiaries; (d) the federal government and its agencies; and (e)
23 Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

24 For purposes of the Missouri Class definition, a “direct purchaser”
25 means an industrial or commercial entity that bought natural gas for its
26 own use or consumption directly from any of the defendants in the
27 Actions, or from a seller other than a local distribution company.

28 (c) “Wisconsin Class” means:

All industrial and commercial purchasers of natural gas for their own
use and consumption during the period from January 1, 2000 through
October 31, 2002, which gas was used or consumed by them in
Wisconsin. 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)
entities that purchased natural gas from entities that sold natural gas
at rates approved by a State regulatory entity or public service
commission (to the extent of such purchases at such approved rates);
(d) defendants and their predecessors, affiliates and subsidiaries; (e)
the federal government and its agencies; and (f) Reorganized FLI, Inc.
(f/k/a Farmland Industries, Inc.).

1 4. “Midwest Classes” means, collectively, the Kansas Class, the Missouri Class, and the
2 Wisconsin Class.

3 5. “Class Period” means, with respect to each of the Midwest Classes, the period from
4 January 1, 2000 through October 31, 2002.

5 6. The Court preliminarily finds that the Settlements set forth in the Agreements: (i)
6 resulted from extensive, good-faith, arm’s-length negotiations between the Parties, conducted after
7 Class Counsel as defined herein had conducted adequate investigation and discovery; and (ii) are
8 sufficiently fair, reasonable and adequate to the Midwest Classes to warrant providing notice in
9 accordance with the Notice Plan described in the Motion for Preliminary Approval and thereafter
10 conducting the final Fairness Hearing as described in Paragraph 11, below.

11 7. The Actions are, for settlement purposes only, certified as class actions against the
12 Settling Defendants pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for
13 each and all of the Midwest Classes and with respect to the Class Period. Certification for settlement
14 purposes is appropriate because:

15 a. The Court preliminarily finds that the requirements of Rules 23(a) and (b)(3) of the
16 Federal Rules of Civil Procedure are met in that:

17 (i) The Midwest Classes are so numerous that joinder of all members is
18 impracticable;

19 (ii) The Plaintiffs’ claims against the Settling Defendants and the defenses thereto
20 present questions of law or fact common to the Midwest Classes that
21 predominate over questions affecting individual members of the Midwest
22 Classes;

23 (iii) The claims against the Settling Defendants brought by the Plaintiffs in the
24 Actions, as industrial and commercial purchasers of natural gas for their own
25 use and consumption during the Class Period, are typical of the claims of, or
26 defenses to the claims of, members of the Midwest Classes against the
27 Settling Defendants;

28

- 1 (iv) Plaintiffs and Class Counsel for the Midwest Classes have fairly, adequately
2 and vigorously represented the interests of the Midwest Classes as respects
3 claims against the Settling Defendants;
- 4 (v) Certifying the Midwest Classes for purposes of settlement is superior to others
5 method for the fair and efficient adjudication of the controversy in the Actions
6 as against the Settling Defendants; and
- 7 (vi) Manageability for trial purposes is not an issue and need not be considered in
8 determining whether to certify the Midwest Classes herein for purposes of
9 settlement. *See Amchem v. Windsor*, 512 U.S. 591, 619 (1997).

10 8. Pursuant to Fed. R. Civ. P. 23(g), for settlement purposes, Polsinelli PC, McCallister
11 Law Group, LLC, and Barry Law Offices, LLC are preliminarily appointed as co-counsel for the
12 Kansas Class; Polsinelli PC and Barry Law Offices, LLC are preliminarily appointed as co-counsel
13 for the Missouri Class, and Polsinelli PC, Kohner, Mann & Kailas S.C., and Barry Law Offices,
14 LLC are preliminarily appointed as co-counsel for the Wisconsin Class (collectively, “Class
15 Counsel”). Learjet, Inc. and Topeka Unified School District 501 are preliminarily appointed as
16 representatives for the Kansas Class; Heartland Regional Medical Center, Prime Tanning Corp., and
17 Northwest Missouri State University are preliminarily appointed as representatives for the Missouri
18 Class; and Arandell Corporation, Merrick’s Inc., Sargento Foods Inc., Ladish Co. Inc., Carthage
19 College, Briggs & Stratton Corporation, and Newpage Wisconsin System, Inc. are preliminarily
20 appointed as representatives for the Wisconsin Class.

21 9. Dahl Administration is preliminarily appointed as Settlement Administrator.

22 10. The Court has reviewed the proposed Long and Short Form Class Notice(s) submitted
23 as Exhibits 8 and 9 to the Declaration of Jennifer Bacon in support of the Motion for Preliminary
24 Approval (Dkt. # 2675-9 and 2675-10) and preliminarily approves such notices as to form and
25 content. Class Counsel and/or the Settlement Administrator shall cause Class Notice to be
26 disseminated in the manner provided in the Notice Plan described in the Motion for Preliminary
27 Approval (the “Notice Plan”) by February 15, 2017. The costs associated with providing class
28 notice shall be borne as set forth in the Agreements, including the provisions in paragraphs 23 and

1 24 thereof addressing the allocation of such costs in the event that the Settlements do not become
2 final. The Court preliminarily finds that the form(s) and method(s) of giving notice of the
3 Settlements are reasonably certain to inform the absent members of the Midwest Classes, are the best
4 notice that is practicable under the circumstances, and constitute valid, due and sufficient notice to
5 all members of the Midwest Classes in compliance with the requirements of the Federal Rules of
6 Civil Procedure and of due process under the United States Constitution, and the requirements of any
7 other applicable rules or laws.

8 11. A final Fairness Hearing is scheduled for May 11,, 2017, at 9:00 a.m. in Courtroom
9 4B of this Court, located at 333 S. Las Vegas Blvd., Las Vegas, NV 89101. At the Fairness Hearing,
10 the Court will consider and/or determine, among other things: (i) whether to finally certify for
11 settlement purposes the Midwest Classes as against the Settling Defendants; (ii) whether to finally
12 approve the Settlements as fair, reasonable and adequate; (iii) whether the Notice Plan and Class
13 Notice(s) provided complied with the Federal Rules of Civil Procedure and due process; (iv) whether
14 to enter the Final Order and Judgment approving the applicable Settlement in the form(s) attached to
15 the respective Agreements as Exhibit 1 thereto; and/or (v) whether to grant the Fee and Expense
16 Application(s) submitted by Class Counsel and/or the applications for incentive award(s) to
17 Plaintiffs and, if so, the amounts thereof to be awarded out of the Settlement Fund(s). The Court
18 reserves the right to approve the Settlements at or after the Fairness Hearing and to do so with such
19 modifications as may be consented to by the applicable Parties and without further notice to the
20 members of the Midwest Classes.

21 12. All papers supporting final approval of the Settlements (other than papers that may be
22 filed by one of the Parties in response to requests for exclusion or objections as described in
23 Paragraphs 14-16 below), shall be filed no later than April 18,, 2017. The Fairness Hearing may be
24 postponed, adjourned or rescheduled by order of the court without further notice to the members of
25 the Midwest Classes, other than that which may be posted on the Court's website.

26 13. The Court further approves the procedures for prospective members of the Midwest
27 Classes to exclude themselves from (*i.e.*, opt out of) or object to, the Settlements, as set forth in
28 Agreements and in the Class Notice(s).

1 14. In particular, any person or entity who seeks to opt out of the Midwest Classes must
2 submit a timely and valid written request for exclusion in accordance with the Agreements. As a
3 result of the release and as provided in paragraph 32 of the Agreements a prospective Class Member
4 seeking to opt out must request exclusion from: (i) all of the Midwest Classes to which the person or
5 entity requesting exclusion belongs or may belong (*i.e.*, it is not permitted to exclude oneself from
6 the Kansas Class but remain in the Missouri Class, etc.); and (ii) all of the Settlements that are the
7 subject of the Class Notice (for example, it is not permitted to exclude oneself from the settlement
8 with one of the Settling Defendants, but remain a class member for purposes of the settlement with
9 any other of the Settling Defendants).

10 15. To be “timely,” a request for exclusion must be mailed to Class Counsel or to the
11 Settlement Administrator at the address(es) provided in the Class Notice and postmarked (or mailed
12 by overnight delivery) no later than March 31, 2017. To be “valid,” a request for exclusion must
13 also: (i) state the name, address, and phone number of the person or entity seeking exclusion; (ii)
14 state all trade names or business names and addresses that the person or entity (and any of his, her or
15 its parents, subsidiaries, affiliates, predecessors or assignors who purchased, used or consumed
16 natural gas during the class period) has used during or since the class period; (iii) state, with respect
17 to natural gas purchased, used or consumed within Kansas, Missouri or Wisconsin during the Class
18 Period by any of the persons and entities described in sub-part (ii) above, an estimate of the total
19 dollar amount paid for such natural gas or an estimate of the total volume of such natural gas; (iv)
20 include the case name of the actions (*In Re Western States Wholesale Natural Gas Antitrust*
21 *Litigation*, MDL No. 1566 (D. Nev.)); (v) include the statement that “[name of person or entity] and
22 all of its parents, subsidiaries and affiliates hereby request to be excluded from the proposed class
23 settlements described in the notice of settlements pertaining to the actions;” and (vi) in the case of an
24 entity, identify the title or position of the person signing on behalf of such entity, state that such
25 person is duly authorized to sign on behalf of such entity, and be signed by such person. A request
26 for exclusion that does not strictly comply with all of the requirements set forth in this paragraph
27 shall be invalid, and every person or entity submitting such an invalid request shall be a Class
28 Member, and shall be bound by the Agreements if they are approved by the Court. Class Counsel

1 shall immediately forward complete copies of all requests for exclusion, as they are received, to
2 counsel for the Settling Defendants (and the Settlement Administrator shall promptly forward to
3 Class Counsel copies of all requests for exclusion, as they are received).

4 16. By April 7, 2017,, counsel for the Parties shall meet and confer and establish
5 complete lists of: (i) all timely and valid requests for exclusion received as of that date; (iii) all
6 requests for exclusion received that the Parties agree are either not timely or otherwise not valid; and
7 (iii) all requests for exclusion received as to which there is any dispute requiring Court resolution at
8 the Fairness Hearing as to whether such request for exclusion was both timely and otherwise valid.
9 Either of the parties may file papers addressing the issues set forth in this paragraph no later than
10 seven (7) days before the Fairness Hearing.

11 17. Any person or entity that submits a timely and valid request for exclusion shall be
12 excluded from the Midwest Classes, shall have no rights with respect to these Settlements (including
13 no right to share in any recovery obtained pursuant to the Actions) and shall not be permitted to
14 intervene as a party plaintiff in the Actions (but without affecting those persons or entities' ability to
15 exercise their rights under Fed. R. Civ. P. 23 or the Class Notice(s)). Any prospective member of
16 the Midwest Classes who does not timely and validly request to be excluded in the manner set forth
17 above and in the Class Notice and the Agreements will be deemed to have waived all rights to opt
18 out of, and will be deemed a member of, the Midwest Classes for all purposes under the Agreements
19 (including the releases of claims thereunder) and will be bound by all proceedings, orders and
20 judgments in the Actions, including the terms of the Settlements, if approved.

21 18. Prospective members of the Midwest Classes who have not timely and validly
22 requested exclusion and who want to object to the Settlements must do so in accordance with the
23 procedures set forth in the Agreements and in the Class Notice(s). Specifically, any such person or
24 entity must, no later than March 31, 2017, both file with the Court and mail to Class Counsel or the
25 Settlement Administrator, and also mail to counsel for the Settling Defendants, a written objection
26 that includes: (i) a notice of intention to appear; (ii) proof of membership in the Midwest Classes;
27 and (iii) the specific grounds for the objection and any reasons why such party desires to appear and
28 be heard, as well as all documents or writings that such party desires the Court to consider. To

1 address the possibility that objectors may fail to mail objections to both sides, the Parties shall
2 exchange, by email within five (5) days after close of the period for filing objections, pdf copies of
3 all objections received.

4 19. Objections to the Settlements shall be heard, and any papers or briefs submitted in
5 support of said objections shall be considered by the Court (unless the Court in its discretion shall
6 otherwise direct), only if they comply with the objection procedures set forth herein. Counsel for the
7 Parties may file and serve written response(s) to any objection no later than April 18, 2017. Any
8 Midwest Class member who does not object in the manner prescribed herein and in accordance with
9 the applicable provisions of the Agreements and Class Notice(s) will be deemed to have waived any
10 objections and will be barred from making any such objections in the Actions or in any other action
11 or proceedings related thereto, including in an appeal or collateral attack.

12 20. Any entity which has timely and properly excluded itself from the Midwest Classes
13 shall be permitted to apply to the Court for good cause shown to re-enter the Midwest Classes prior
14 to final approval of the settlement classes. If the Court approves such application, the applying
15 entity will retain the same rights and obligations under the Agreement as the Class Members.

16 21. Pursuant to the stipulation of the Parties, they, and their respective counsel, shall not
17 encourage or solicit, or substantively assist in any way whatsoever, any person or entity to request
18 exclusion from the Midwest Classes.

19 22. Pursuant to the Agreements, each of the Settling Defendants shall deliver into the
20 Escrow Account the initial installment of its payment towards the Settlement Fund by February 9,
21 2017. Up to a maximum of \$100,000 from each of the Settling Defendants' payments towards the
22 Settlement Fund may be utilized toward the costs of Class Notice and/or of administration of the
23 Settlement Fund (subject to further allocation as provided in the Agreements).

24 23. If final approval of the Settlements is not obtained, or if the Settlements do not
25 become Final as provided in the Agreements, or if the Agreements are otherwise terminated or
26 rescinded pursuant to their terms for any reason (including pursuant to the applicable
27 Supplemental Agreement(s)), then: (i) any preliminary or final certification of the Midwest Classes
28 shall be automatically vacated, *nunc pro tunc*; (ii) all other provisions set forth in paragraph 16 of

1 the Agreement shall apply; (iii) any and all amounts paid by Settling Defendants into the Settlement
2 Fund and/or deposited in the Escrow Account (including interest earned thereon) shall be returned to
3 Settling Defendants within thirty (30) calendar days, less only disbursements made in accordance
4 with paragraphs 23 and 24 of the Agreements; and (iv) Settling Defendants shall have no further
5 payment obligations pursuant to the Agreements.

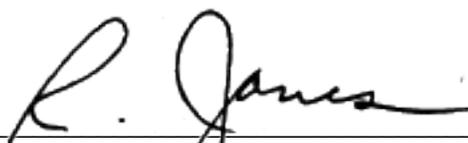
6 24. Neither the Agreements nor this Order shall be deemed or construed to be an
7 admission by the Settling Defendants of: (i) any violation of any statute or law or of any liability or
8 wrongdoing whatsoever by the Settling Defendants; or (ii) the propriety of certification of a
9 litigation class in the Actions.

10 25. To facilitate administration of the Settlements pending final approval, the Court
11 hereby stays all proceedings in the Actions as between the Midwest Classes and the Settling
12 Defendants until further order of the Court, except such proceedings as may be necessary either to
13 implement the Settlements or to comply with or effectuate the terms of the Agreement or Fed. R.
14 Civ. P. 23. The Court further enjoins, prior to entry of a final order after the Fairness Hearing, all
15 Midwest Class members from filing any claims, suits or proceedings asserting Released Claims
16 against any of the Settling Defendants unless and until such Midwest Class members have filed valid
17 requests for exclusion in accordance with Paragraphs 14-15 hereof.

18 26. If any deadline in this Order falls on a non-business day, then the deadline is extended
19 until the next business day.

20
21 **IT IS SO ORDERED.**

22
23 Dated: **January 8, 2017** _____



Hon. Robert C. Jones
United States District Judge