

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 12**

In re KINDER MORGAN, INC.
SHAREHOLDERS LITIGATION

Consolidated Case No. 06-C-801

(This Order Relates to All Actions.)

**ORDER PRELIMINARILY APPROVING SETTLEMENT, NOTICE AND
FINALLY CERTIFYING A CLASS**

WHEREAS, Lead Plaintiff Douglas Geiger (“Lead Plaintiff”), on behalf of himself and the Class (as defined below); Kinder Morgan, Inc. (“KMI”); and Defendants Richard D. Kinder, Fayez Sarofim, Michael C. Morgan, William V. Morgan, C. Park Shaper, Steven J. Kean, Kimberly Dang, David Kinder, Joseph Listengart, James Street, Knight Holdco LLC (now known as Kinder Morgan Holdco LLC), AIG Financial Products Corp., AIG Knight LLC, Carlyle/Riverstone Global Energy and Power Fund III, L.P., Carlyle Partners IV, L.P., The Goldman Sachs Group, Inc., GS Global Infrastructure Partners I, L.P., GS Capital Partners V Institutional, L.P., and GS Capital Partners V Fund, L.P. (“Defendants,” together with KMI and the Lead Plaintiff, the “Parties”) have agreed to settle all claims asserted against the Defendants in this Action with prejudice on the terms and conditions set forth in the Stipulation of Settlement (the “Stipulation”), dated September 7, 2010, subject to the approval of this Court (the “Settlement”);

WHEREAS, on January 30, 2009, this Action was previously certified as a class action pursuant to K.S.A. §§ 60-223(a) and (b)(3);

WHEREAS, the Parties have made an application, pursuant to K.S.A § 60-223, for an order preliminarily approving the Settlement in accordance with the Stipulation and providing notice to the Class Members as more fully described herein; and,

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits attached thereto and in light of all proceedings in the Action to date, and after due deliberation and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The definitions in the Stipulation are incorporated herein by reference, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. **Class Certification for Settlement Purposes** – The Class definition for the purposes of this Settlement shall be all holders of KMI common stock during the period May 29, 2006 through May 30, 2007, and their transferees, successors, and assigns. Excluded from the Class are Defendants and members of their immediate families or trusts for the benefit of any Defendant or his or her immediate family members and any majority-owned affiliates of any Defendant. Also excluded from the Class are those Persons who timely and validly request exclusion in accordance with the requirements set forth in the Notice.

3. The Court finds, for the purposes of effectuating the Settlement only, that each element required for certification of the Class pursuant to K.S.A. §§ 60-223(a) and (b)(3) has been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the named representative are typical of the claims of the Class he seeks to represent; (d) the named representative has and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, the Court permanently and

finally certifies, for purposes of the Settlement only, this Action as a class action pursuant to K.S.A. §§ 60-223(a) and (b)(3), on behalf of the Class as defined in Paragraph 2.

4. The Court confirms the appointment of Douglas Geiger as Lead Plaintiff and of Pamela S. Tikellis of Chimicles & Tikellis LLP, Randall J. Baron of Robbins Geller Rudman & Dowd LLP and Diane A. Nygaard of The Nygaard Law Firm as Lead Plaintiff's Counsel.

5. **Preliminary Approval of Proposed Settlement** – The Court hereby preliminarily approves the proposed Settlement, as embodied in the Stipulation (including the releases set forth therein), as being fair, reasonable and adequate, subject to further consideration at the Settlement Hearing to be conducted as described below.

6. **Settlement Hearing** – The Settlement Hearing shall be held on November 12, 2010, at 9:30 a.m., in the District Court of Shawnee County, Kansas, Division 12, 200 SE 7th Street, Topeka, Kansas 66603, in order to:

(a) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and whether it should be approved by the Court;

(b) determine whether a Judgment (substantially in the form attached as Exhibit B to the Stipulation) should be entered, *inter alia*, dismissing the Action on the merits, with prejudice, and releasing any and all Released Claims as against all Released Persons;

- (c) determine whether the proposed Plan of Allocation should be approved;
- (d) determine whether the application by Lead Plaintiff's Counsel for an award of attorney's fees and reimbursement of expenses should be approved; and
- (e) rule upon such other matters as the Court may deem appropriate.

7. Notice of the Settlement Hearing shall be given to the Class Members as set forth in Paragraph 9 of this Order. The Court may: (a) adjourn or continue the Settlement Hearing without further notice to Class Members; and (b) approve the Settlement and/or the Plan of Allocation with such modifications as may be consented to by the Parties without further notice of any kind.

8. **Retention of Claims Administrator and Manner of Notice** – Lead Plaintiff's Counsel is hereby authorized to retain the firm of The Garden City Group, Inc., of Melville, New York, to serve as the Claims Administrator to supervise and administer the notice procedures as well as the processing of claims.

9. Notice of the Settlement and the Settlement Hearing shall be given by Lead Plaintiff's Counsel as follows:

- (a) Not later than ten (10) business days after the date of this Order (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim and Release Form (the "Claim Form"), substantially in the form annexed as Exhibits A and B hereto, to be mailed by first-class mail to all Class Members who can be identified with reasonable efforts;

(b) not later than ten (10) business days after the Notice Date (the “Publication Notice Date”), the Claims Administrator shall cause the Publication Notice, substantially in the form attached hereto as Exhibit C, to be published in the national editions of the Wall Street Journal and of the Investor’s Business Daily;

(c) not later than ten (10) business days after the date of this Order, the Claims Administrator shall post on its website at www.gardencitygroup.com, the Stipulation, Notice and Claim Form; and

(d) not later than thirty (30) days prior to the Settlement Hearing, Lead Plaintiff’s Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit or declarations, of such mailing and publication.

10. Lead Plaintiff’s Counsel may pay from the Settlement Fund, without further consent from the Defendants or further order of the Court, all Taxes and reasonable Notice and Administration Costs actually incurred up to \$1,000,000 pursuant to, and in accordance with, the terms of the Stipulation. Such costs and expenses shall include the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing Notice and processing the submitted Claims, and the fees, if any, of the Escrow Agent. Lead Plaintiff’s Counsel shall keep an accurate accounting of the actual costs and expenses paid, which shall be made available to the Court upon request. In the event the Settlement is not approved by

the Court or fails to become effective, neither Lead Plaintiff nor any of his counsel shall have any obligation to repay any amounts actually incurred or properly disbursed from the Settlement Fund up to \$1,000,000.

11. **Approval of Form and Content of Notice** – The Court: (a) approves the form, substance and requirements of (i) the Notice; (ii) the Summary Notice; and (iii) the Claim Form, and (b) finds that the procedures established for the mailing and distribution of the Notice and publication of the Summary Notice in the manner and form set forth in Paragraph 9 of this Order: (i) constitute due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement and to apprise the Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases contained therein), and of their rights to object to the proposed Settlement and appear at the Settlement Hearing or to exclude themselves from the Settlement; (ii) satisfy and comply in full with the requirements of the laws of the State of Kansas, the rules of the District Court of Shawnee County, Kansas, K.S.A. § 60-223(c)(2), and the United States Constitution (including the Due Process Clause), and any other applicable law, rules and/or regulations.

12. **Nominee Procedures** – The Claims Administrator shall use reasonable efforts to give notice to nominee owners such as banks, brokerage firms and other Persons who held KMI common stock during the period May 29, 2006 through May 30, 2007 as owners. Such nominees are directed to send a copy of the Notice and the Claim Form to the beneficial owner of the shares postmarked no more than fifteen (15) calendar days from the date of

receipt of the Notice, or to provide the names and addresses of such Persons no later than fifteen (15) calendar days from the date of receipt of the Notice to the Claims Administrator, who shall promptly send a copy of the Notice and Claim Form to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund.

13. **Participation in the Settlement** – Class Members who wish to participate in the Settlement and receive a distribution from the proceeds of the Settlement maintained in the Settlement Fund must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise upon a showing of excusable neglect, all Claim Forms must be postmarked no later than ninety (90) calendar days after the Notice Date. Notwithstanding the foregoing, Lead Plaintiff’s Counsel may, at its discretion, accept for processing late claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class. By submitting a Claim Form, a Person shall be deemed to have submitted to the jurisdiction of the District Court of Shawnee County, Kansas, with respect to his, her or its claim and the subject matter of the Settlement.

14. Any Class Member that does not timely and validly submit a Claim Form or whose claim is not otherwise approved by the Court: (a) shall be deemed to have waived his,

her or its right to share in the Net Settlement Fund; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment and the releases provided for therein, whether favorable or unfavorable to the Class; and (d) will be barred from commencing, maintaining or prosecuting this Action or any of the Released Claims against each and all of the Released Persons, as more fully described in the Notice.

15. **Exclusion from the Class** – All Persons who are Class Members shall be bound by all determinations and judgments in the Action, whether favorable or unfavorable, unless he, she or it requests exclusion from the Class in a timely and proper manner, as hereinafter provided. A Person wishing to make such request for exclusion shall mail the request in written form by first-class mail to the address designated in the Notice, such that it is postmarked no later than seventeen (17) days prior to the Settlement Hearing. The request for exclusion must be signed by the Person seeking exclusion and shall include that Person's: (a) name, (b) address, (c) telephone number, (d) the number of shares of KMI owned as of (i) May 29, 2006 and (ii) May 30, 2007, (e) a list identifying all transactions in KMI stock during the Class Period, (f) the date on all KMI shares held on May 30, 2007, or sold at any time during the Class Period were first acquired, and (g) a statement that the Person requests to be excluded from the Class in the *In re Kinder Morgan, Inc. Shareholders Litigation*, Consolidated Case No. 06-C-801. Unless the Court otherwise orders, no request

for exclusion shall be valid or effective unless it provides the required information and is made within the time stated above.

16. Copies of all requests for exclusion shall be provided by Lead Plaintiff's Counsel to Defendants' Counsel within two (2) business days of receipt of such requests by electronic mail or facsimile. A list of all Persons who have validly and timely requested exclusion from the Class shall be provided to Defendants' Counsel within two (2) business days after the expiration of the deadline for submission of Requests for Exclusion as set forth in the Notice.

17. Any Person who timely and validly requests exclusion in compliance with the terms stated in this Order (as more fully described in the Notice) and is excluded from the Class shall not be a Class Member, shall not be bound by the terms of the Settlement and shall have no right to receive any payment from the Net Settlement Fund.

18. Any Class Member who does not timely and validly request exclusion from the Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement; (b) shall be forever barred from requesting exclusion from the Class in this or any other proceeding; (c) shall be bound by all proceedings, determinations, orders and judgments in the Action relating to the proposed Settlement, including, but not limited to, the Judgment and the Releases provided for therein; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Claims against each and all of the Released Persons, as more fully described in the Notice.

19. **Supporting Papers and Objections** – All papers in support of final approval of the Settlement, the Plan of Allocation, or the application by Lead Plaintiff’s Counsel for attorneys’ fees and expenses incurred in connection with the prosecution of this Action shall be filed and served no later than thirty (30) days prior to the Settlement Hearing. All replies in support of the Settlement, Plan of Allocation, or the application for an award of attorneys’ fees and expenses shall be filed with the Clerk of the Shawnee County District Court no later than seven (7) days prior to the Settlement Hearing.

20. Any member of the Class who has not requested exclusion from the Class may appear at the Settlement Hearing to show cause why the proposed Settlement should not be approved as fair, reasonable and adequate; why judgment should not be entered thereon; why the Plan of Allocation should not be approved as fair and reasonable; and why Lead Plaintiff’s Counsel’s application for an award of attorneys’ fees and reimbursement of expenses in connection with the prosecution of this Action should not be granted, provided, however, that no member of the Class shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Judgment to be entered approving the same, the Plan of Allocation, or the attorneys’ fees and expenses requested, unless that Person has served, by hand or first-class mail, written objections by no later than seventeen (17) days prior to the Settlement Hearing on each of: (a) Jeffrey D. Light, Esq., Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900 San Diego, California 92101 and Pamela Tikellis, Esq., Chimicles & Tikellis, LLP, 222 Delaware Avenue, 11th Floor,

P.O. Box 1035, Wilmington, DE 19899, on behalf of the Plaintiffs and the Class; and (b) Joseph S. Allerhand, Esq., Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Kenneth B. Forrest, Esq., Wachtell, Lipton, Rosen & Katz LLP, 51 West 52nd Street, New York, NY 10019, J. Christian Word, Esq. Latham & Watkins, LLP, 555 Eleventh Street, NW Suite 1000, Washington, DC 20004, and Amelia T.R. Starr, Esq., Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, on behalf of Defendants (the “Statement of Objection”). The Statement of Objection, and any accompanying memoranda and other papers (including an affidavit showing due proof of service of the Statement of Objection upon all counsel listed above), shall be filed with the Clerk of the Shawnee County District Court, 200 SE 7th Street, Room 209, Topeka, Kansas 66603, on or before seventeen (17) days prior to the Settlement Hearing.

21. The Statement of Objection of the Class Member shall: (a) state he, she, or it is a Class Member, (b) identify the number of shares of KMI owned as of (i) May 29, 2006, and (ii) May 30, 2007, (c) contain a list identifying all transactions in KMI stock during the Class Period, (d) provide the date on all KMI shares held on May 30, 2007, or sold at any time during the Class Period were first acquired, (e) describe the part of the Settlement, Plan of Allocation and/or application for attorneys’ fees and expenses to which the Class Member objects; and (f) state the specific reason(s), if any, for each such objection made by the Class Member, including any legal support the Class Member wishes to bring to the Court’s attention and any evidence the Class Member wishes to introduce.

22. Any Person who requests exclusion from the Class shall not be entitled to submit a Statement of Objection, and no such Statement of Objection shall be heard.

23. Any Class Member who files and serves a Statement of Objection – and only such Class Members – may appear at the Settlement Hearing, either in person or through counsel hired at the Class Member’s own expense, to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to any term(s) of this Settlement Agreement, the proposed Plan of Allocation, or to the proposed Attorneys’ Fees and Expenses Award. All attorneys who appear at the Settlement Hearing must be licensed to practice law in Kansas or admitted *Pro Hac Vice* pursuant to Kansas Supreme Court Rule 116. Class Members or their attorneys intending to make an appearance at the Settlement Hearing must both effect service on Lead Plaintiff’s Counsel and Defendants’ Counsel, and file with the Clerk of the Shawnee County District Court a notice of intention to appear by no later ten (10) days prior to the Settlement Hearing, or as the Court may otherwise direct. The Court reserves the right to place time limits on the arguments and to decline to hear the same objections more than once.

24. Any Class Member who does not submit a Statement of Objection, or otherwise fails to comply with any of the above provisions, shall: (a) waive and forfeit any and all rights he, she or it may otherwise have to appear separately at the Settlement Hearing and/or to object to the Settlement, the Plan of Allocation and/or the Attorney Fees and Expenses Award; (b) forever be foreclosed from making any objection to the fairness,

adequacy or reasonableness of the Settlement, the Judgment to be entered approving the Settlement, the fairness and reasonableness of the Plan of Allocation, and the attorneys' fees and expenses requested in this or any other forum or Court; and (c) be bound by all the terms of the Stipulation and by all proceedings, orders and judgments entered by the Court in the Action.

25. Neither Defendants nor Defendants' Counsel shall have any responsibility whatsoever for the Plan of Allocation nor for any application for attorneys' fees and expenses submitted by Lead Plaintiff's Counsel, and both such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

26. **Settlement Fund** – All funds shall be held in an Escrow Account to be maintained at a federally insured bank in Topeka, Kansas. Such funds shall be deemed and considered to be in *custodia legis* of the District Court of Shawnee County, Kansas, and shall remain subject to the jurisdiction of this Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order of the Court.

27. The passage of title and ownership of the Settlement Fund to the Escrow Agent subject to the terms and obligations of the Stipulation is approved. No Person that is not a Class Member or counsel to the Plaintiffs shall have any right to any portion of, or any rights in the distribution of, the Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

28. **Termination of Settlement** – If the Stipulation is terminated, the Settlement is not approved or the Effective Date does not occur, this Order (including, without limitation, the provisions in Paragraph 3 relating to class certification) shall become null and void and be without prejudice to the rights of Lead Plaintiff, the Class Members and the Defendants, all of whom shall be restored to their respective positions in the Action as of September 6, 2010.

29. **Use of this Order** – This Order, the proposed Settlement, the Stipulation and any and all of their terms (and all negotiations, discussions and proceedings in connection therewith): (a) shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal other than as may be necessary to enforce the terms of this Order and/or the proposed Settlement; (b) shall not be described as, construed as, interpreted as or offered or received against any of the Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by the Defendants as to any liability, negligence, fault, wrongdoing on their part or the validity of any claim by Lead Plaintiff or the merits of any of their defenses; and (c) shall not be described as, construed as, interpreted as, or offered or received against Lead Plaintiff or any Class Member as evidence of any infirmity in the claims of said Persons.

30. **Stay of Litigation** – All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are

hereby stayed and suspended until further order of this Court. Pending final approval of the Settlement, Plaintiffs and all members of the Class are barred, enjoined, and restrained from commencing, prosecuting, continuing, or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class or other person, any of the Released Claims against any of the Released Persons.

31. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or in connection with the Settlement.

32. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Class Members.

Entered on this ____ day of September, 2010.

THE HONORABLE DAVID E. BRUNS
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing **MEMORANDUM DECISION AND ORDER** was faxed and mailed on this ____ day of September, 2010, to the following:

Liaison Counsel for Plaintiffs:

John R. Hamilton
3649 SW Burlingame Road, Suite 200
Topeka, Kansas 66611-2277
Fax (785) 267-2942

Liaison Counsel for Defendants:

R. Patrick Riordan
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