

Decision No. C07-0005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 06A-637FG

IN THE MATTER OF THE APPLICATION OF KINDER MORGAN, INC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE
EXERCISE OF FRANCHISE RIGHTS GRANTED BY THE TOWN OF MEAD,
COLORADO.

**DECISION GRANTING APPLICATION
TO EXERCISE FRANCHISE RIGHTS**

Mailed Date: January 2, 2007
Adopted Date: December 28, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application filed by Kinder Morgan, Inc. (KMI or the Company) on November 20, 2006, seeking a Commission order granting it a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights in the Town of Mead, Colorado (the Town or Mead). The application is complete and contains all information required by Commission rules.

2. The Commission gave notice of this application on November 24, 2006, to all interested persons, firms, and corporations. In Addition, KMI provided public notice of this application in *The Greeley Tribune* on November 23, 2006.

3. No petition to intervene or notice of intervention has been filed, and thus the application is unopposed. Accordingly, the application will be determined without a formal hearing in accordance with § 40-6-109(5), C.R.S., and Rule 1403 of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1.

4. KMI provides natural gas public utility service within the Town and numerous certificated areas throughout the state.

5. KMI requests that the Commission issue an order granting it a CPCN to exercise franchise rights in Mead.

6. Pursuant to Ordinance No. 484, passed on March 29, 2004, the Town granted KMI authority to provide gas service in Mead for thirteen (13) years. Ordinance No. 484 is the initial franchise agreement between KMI and Mead. Prior to the annexation of additional properties by the Town, KMI provided gas service to only the rural area outside the limits of the Town. Through annexations a portion of the Town's boundary limits fall within the stated defined service area granted to KMI in Decision No. R04-0027 (Docket No. 00A-428G).

7. The Company states an administrative oversight is the reason for its failure to timely file a request with the Commission for a CPCN to exercise franchise rights granted by the Town. KMI states new procedures have been implemented to prevent this situation from occurring again in the future.

8. It is a prerequisite for a utility wishing to exercise any franchise agreement or privileges entered into with a municipality to first obtain from the Commission pursuant to § 40-5-102, C.R.S., a certificate that the public convenience and necessity requires the exercise of such right or privilege.

9. Applications pursuant to § 40-5-102, C.R.S., allow the Commission to review franchise agreements to ensure that the terms are reasonable and in the public interest. However, we emphasize that it is KMI's responsibility to timely file applications for CPCNs to exercise franchise rights.

10. The Commission understands that a utility and municipality may want to revise the terms established in a franchise agreement at some point in the future and that existing franchise agreements have scheduled expiration dates. Upon negotiation of a new or amended franchise agreement, we expect the utility to return to the Commission in a timely manner to obtain authorization to implement the provisions of the new franchise agreement. The Commission has a statutory obligation to review franchise agreements.

11. Pursuant to the franchise agreement presented in this application, as consideration for the franchise rights granted and in recognition of KMI's right to use the streets, the Town requires that KMI collect and remit to the Town a franchise fee of \$0.02/Ccf multiplied by the volume of gas delivered to residential and commercial customers within the Town. In addition, the Company shall pay the Town an initial lump sum franchise fee of no more than \$10,000. We remind KMI that it may recover this initial fee from residential and commercial customers over the effective period of this franchise only after duly authorized by the Commission in a subsequent application, if the recovery of said initial fee is in addition to the approved regular franchise fee of \$0.02/Ccf.

12. We find that the franchise is required by the public convenience and necessity and that the terms of the franchise agreement are just, reasonable, and in the public interest. However, in the event that issues of revenue requirement, cost allocation, and rate design are implicated by any provision of the franchise agreement, those issues will be analyzed in an appropriate Commission docket. Approval of the franchise agreement does not constitute approval of, or precedent regarding any principle or issue in revenue requirement, cost allocation, or rate design in any gas cost adjustment, refund, or rate case dockets.

13. No other gas utility is authorized to provide gas utility service within the area for which KMI seeks a certificate in this Application.

14. The requirement to provide a feasibility study as set forth in Rule 4 CCR 723-4-4100(b)(VI) can be satisfied by alternatively utilizing KMI's consolidated financial statements. Accordingly, the Commission will grant KMI's request that the financial statements submitted as part of this Application be accepted in lieu of a feasibility study. Further, KMI has obtained a waiver of Rule 4002(b)(IX) of the Commission's Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4, pursuant to Decision No. C06-1069 in Docket No. 06V-371G. Rule 4002(b)(IX) stipulates that "For applications listed in subparagraphs (a)(I), (II), (III), (V), and (VI) of this rule, a copy of the applying utility's or parent company's and consolidated subsidiaries' most recent audited balance sheet, income statement, statement of retained earnings, and statement of cash flows so long as they provide Colorado specific financial information" be provided with a CPCN application.

15. Except for Public Service Company of Colorado, no other gas utility is authorized to provide gas utility service in or near the areas for which KMI seeks certificates in this application. A map reflecting the Town and the service territory within which KMI seeks to exercise franchise rights is attached as Appendix A.

16. KMI has the financial ability and is qualified and competent to conduct the utility operations sought under its application. KMI's gas tariff, currently on file with the Commission, will be used for services under this application.

17. Providing uninterrupted service to the citizens of Mead is in the public interest. Therefore, the Commission finds that the application is in the public interest and should be granted.

II. ORDER

A. The Commission Orders That:

1. The application by Kinder Morgan, Inc. (KMI) for a Certificate of Public Convenience and Necessity (CPCN) to exercise franchise rights pursuant to Ordinance No. 484 in the Town of Mead, Colorado, is deemed complete and granted. The CPCN is for the 13-year term of the current franchise agreement, Ordinance No. 484.

2. Granting this application for a CPCN to operate under the terms of this franchise agreement is in the public interest.

3. The request by KMI to substitute the submitted financial statements as proof of sufficient financial ability to continue to provide utility service as prescribed, in lieu of a feasibility study, as permitted by Rule 4 *Code of Colorado Regulations* 723-4-4100(b)(VI), is granted.

4. This grant of authority shall not be construed as constituting approval of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained or referenced in the franchise agreement. Approval of the franchise agreement is without prejudice concerning any rate, charge, classification, principle, or issue with respect to revenue requirement, cost allocation, and rate design in any cost adjustment, refund, or rate case dockets.

5. The franchise agreement between KMI and the Town of Mead will expire on February 9, 2017.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 28, 2006.**

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners