

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-226SG

IN THE MATTER OF THE APPLICATION OF KINDER MORGAN, INC. FOR
AUTHORIZATION TO ISSUE UNSECURED SECURITIES AND/OR COMMON
STOCK UP TO AN AGGREGATE INITIAL OFFERING PRICE NOT TO EXCEED
\$2 BILLION PURSUANT TO A SHELF REGISTRATION UNDER SEC RULE 415.

ORDER GRANTING APPLICATION

Mailed Date: June 18, 2003
Adopted Date: June 18, 2003

I. BY THE COMMISSION

A. Statement

1. On May 27, 2003, Kinder Morgan, Inc. (KMI), filed a verified application (Application) pursuant to Rule 56 of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations* (CCR) 723-1, for an order under § 40-1-104, C.R.S., authorizing KMI to issue unsecured senior debt securities, unsecured subordinated debt securities, and/or common stock, as described herein, in any combination in one or more offerings up to an aggregate initial offering price not to exceed \$2 billion (collectively the Securities). The Securities will be offered, issued, and sold pursuant to a Registration Statement under the Securities Act of 1933 on Form S-3 (Shelf Registration), which was filed with the Securities and Exchange Commission (SEC) on February 4, 2003 pursuant to SEC Rule 415. KMI requests authorization from the Commission to issue the Securities under the Shelf Registration from time-to-time without further filings or Commission authority, in accordance with the terms and conditions set forth in the Application and the Shelf Registration.

2. The Commission issued notice of the Application on May 29, 2003 to all interested persons, firms, and corporations. A hearing relating to the merits of the Application has been scheduled for June 20, 2003. Additionally, KMI caused notice of the filing of this Application to be published in the *Denver Post* and the *Rocky Mountain News* legal notices on May 27, 2003. The newspaper publication provided that comments or interventions should be filed with the Commission on or before June 6, 2003. The Commission's mailed Notice required that comments or requests for intervention be filed on or before June 9, 2003. No petition to intervene or notice of intervention has been filed and the application is uncontested. Accordingly, the Application will be determined without a formal hearing, as provided for in § 40-1-104(3) and § 40-6-109(5), C.R.S., and Rule 24 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

B. Findings of Fact

3. KMI is one of the largest energy transportation and storage companies in the United States, operating more than 35,000 miles of natural gas and products pipelines and approximately 80 bulk and liquids terminals located in 37 states. KMI owns the general partner interest of Kinder Morgan Energy Partners, L.P., which is a publicly traded master limited partnership performing numerous energy and energy related operations. Combined, the two companies have an enterprise value of approximately \$19 billion. KMI's assets exceed \$10 billion and its 2002 annual revenues exceeded \$1 billion. On December 31, 2002, stockholders' equity was approaching \$2.4 billion and its net income, after taxes, available to the shareholders was more than \$302,000,000. Its principal business segments are: (i) Natural Gas Pipeline Company of America (NGPL); (ii) TransColorado Gas Transmission Company (TransColorado); (iii) Kinder Morgan Retail; and (iv) Kinder Morgan Power. The business

operations of Kinder Morgan Energy Partners, L.P. include: liquids and refined petroleum products pipeline transportation, transportation and storage of natural gas, carbon dioxide production and transportation, and bulk and liquids terminals.

4. NGPL is KMI's largest business segment. NGPL originates natural gas transportation in Texas, New Mexico, and Louisiana and transports the gas to its principal market area of Illinois, Indiana, and Iowa, and a secondary market area in portions of Wisconsin, Nebraska, Kansas, Missouri, and Arkansas. The pipeline consists of two interconnected transmission facilities terminating in the Chicago metropolitan area. During the year 2002, it delivered an average of 1.67 trillion British thermal units per day of natural gas to this market.

5. TransColorado operates approximately 300 miles of interstate natural gas pipelines on the western slope of Colorado and northwestern New Mexico. TransColorado's pipeline system, which extends from approximately 30 miles east of Meeker, Colorado to Bloomfield, New Mexico, has 17 points of interconnection with 5 interstate pipelines, 1 intrastate pipeline, 2 gathering systems, and 2 local distribution companies. TransColorado is one of the largest transporters of natural gas from the Western Slope supply basins of Colorado.

6. Kinder Morgan Retail is KMI's retail natural gas distribution business. It serves approximately 240,000 customers in Colorado, Nebraska, and Wyoming through about 10,500 miles of distribution pipelines. Its intrastate pipelines, distribution facilities, and retail natural gas sales in Colorado and Wyoming are subject to the regulatory authority of each state's utility commission. In Nebraska, retail natural gas sales for residential and small commercial customers are regulated by each municipality served.

7. Kinder Morgan Power is the portion of KMI's business that designs, develops, and constructs natural gas-fired electric power generation projects and operates electric generation facilities as an independent power producer, both for itself and on behalf of others.

8. Within its Colorado utility service area, KMI performs both bundled natural gas sales service and transportation service pursuant to Commission rules. It conducts natural gas utility operations in the northeastern quarter of Colorado pursuant to certificates of public convenience and necessity (CPCNs) granted to KMI by the Commission. Within this northeastern Colorado service area, KMI serves areas and municipalities within Logan, Morgan, Phillips, Sedgwick, Washington, Weld, and Yuma counties.

9. Pursuant to CPCNs issued by this Commission, KMI serves the western slope communities of Aspen, Austin, Basalt, Carbondale, Cedaredge, Collbran, Cory, Crawford, DeBeque, Delta, Eagle, Eckert, Edwards, El Jebel, Glenwood Springs, Gypsum, Hotchkiss, Lazeur, Mesa, Molina, Montrose, Naturita, Norwood, Nucla, Olathe, Orchard City, Paonia, Placerville, Plateau City, Redvale, Sawpit, Snowmass, Snowmass Village, Telluride, and Woody Creek. In the front range, KMI serves the communities of Dacono, Evanston, Firestone, Frederick, and Wellington. In southern Colorado it owns and operates a natural gas distribution system that serves customers in Bent, Crowley, Otero, Archuleta, La Plata, and Mineral counties, Colorado.

10. Rocky Mountain Natural Gas Company, a wholly-owned subsidiary of KMI, operates a transmission system which centers on a pumping station at Collbran, Colorado, extending north to the Big Hole and Blue Gravel Fields in Moffat County near the Wyoming state line, as far south as Slick Rock and Telluride in San Miguel County, and east to Aspen in Pitkin County and Avon in Eagle County, Colorado. This transmission line connects with certain interstate transmission lines and delivers natural gas at numerous city gates for its only wholesale gas customer, KMI.

11. KMI's principal operations are in states other than Colorado and include substantial operations in interstate commerce. Over the years the Commission has at various times considered KMI's securities issuances to be subject to or exempt from Commission regulation.

12. On June 23, 1975, in Decision No. 87046, the Commission held that KMI's securities were not subject to the jurisdiction of the Commission and that state regulation would burden interstate commerce. Section 40-1-104, C.R.S., was subsequently amended on March 19, 1982, by adding provisions which limit Commission jurisdiction over securities issuances to corporations that derive more than 5 percent of their consolidated gross revenues in the State of Colorado as a public utility, or derive a lesser percentage if said revenues are realized by supplying an amount of energy which equals 5 percent or more of Colorado's consumption.

13. Under the 5 percent tests, KMI's securities were not regulated by the Commission until KMI acquired the Colorado public utility operations of Rocky Mountain in 1986. At that time, and for the first time, KMI's Colorado utility revenues exceeded 5 percent of KMI's

consolidated gross revenues. *See* Decision No. C92-362 dated March 18, 1992. After that acquisition, KMI filed numerous securities applications in compliance with § 40-1-104, C.R.S.¹

14. KMI's consolidated gross revenues from operations outside of Colorado began to grow substantially after 1997. The following Table I shows KMI's consolidated gross revenues for the calendar years ended December 31, 1997 through December 31, 2002.

TABLE I	
<u>Year Ended December 31</u>	<u>Consolidated Gross Revenues (In Thousands)</u>
1997	\$ 340,685
1998	\$1,659,171
1999	\$1,834,094
2000	\$2,678,956
2001	\$1,054,907
2002	\$1,015,255

15. In calendar year 1998, KMI acquired MidCon Corp., the company that owned NGPL. As a result, KMI's consolidated gross revenues substantially increased, causing KMI to once again become exempt under the 5% tests set forth in C.R.S. Section 40-1-104. For the twelve months ended September 30, 1997, KMI's Colorado public utility revenues of \$44,776,402 amounted to 2.4% of KMI's total consolidated gross revenues for that period, well under the 5% threshold. Nor did KMI supply an amount of energy equal to 5% or more of Colorado's consumption. Based upon these facts, the Director of the Commission sent KMI a letter dated January 30, 1998, agreeing that KMI was not subject to CPUC jurisdiction over its securities.

¹ *See* Decisions Nos. C86-1394 dated October 21, 1986, C87-45 dated January 13, 1987, C87-156 dated February 3, 1987, C87-498 dated April 20, 1987, C87-522 dated April 20, 1987, C88-1187 dated September 7, 1988, C89-937 dated July 5, 1989, C90-273 dated February 22, 1990, C90-328 dated March 7, 1990, C92-362 dated March 18, 1992, C92-871 dated July 1, 1992, C93-1143 dated September 15, 1993, C93-1171 dated September 23, 1993, C93-1276 dated October 13, 1993, C94-807 dated June 24, 1994, C94-1127 dated August 24, 1994, C96-664 dated June 26, 1996, C97-1351 dated December 17, 1997 and C02-1100 dated October 2, 2002, to list but a few.

16. As a result of further KMI business restructurings, and in particular the transfer by KMI to KMP of Kinder Morgan Texas Pipeline, LLC, which owns and operates pipeline assets in Texas, KMI's consolidated gross revenues decreased and KMP's revenues increased. This, in turn, had the effect of increasing the percentage of KMI's Colorado intrastate utility revenues when compared only to consolidated gross revenues for KMI. In 2002, Kinder Morgan Retail's Colorado operations had gross utility revenues of \$73,783,038 compared to total KMI consolidated gross revenues (excluding the revenues of its affiliated KMP) for calendar year 2002 of \$1,015,255,000. This resulted in a Colorado utility revenue percentage calculation of 7.3 percent for KMI with no KMP revenues included. When KMP revenues are included, the combined gross consolidated revenues of KMI and KMP result in a Colorado utility revenue percentage of only 1.4 percent.

17. In 2002, KMI resumed filing securities applications with the Commission (*see* Decision Nos. C02-1100 and C02-1329). KMI then filed the present Application seeking Commission approval to issue securities under its Shelf Registration, and to ensure compliance with Colorado law and Commission regulations to the extent applicable.

18. KMI has registered the Securities with the SEC pursuant to Rule 415 (Shelf Registration) under the Securities Act of 1933, as amended. Each time a portion of the authorized Securities is marketed, KMI will file a supplemental prospectus with the SEC. Each supplemental prospectus will include the terms and conditions of the offering then being made.

19. KMI seeks authority to issue the Securities in any combination of debt or equity in one or more offerings from time to time, up to an aggregate initial offering price not to exceed \$2 billion as KMI deems appropriate without further Commission approval. This will allow

KMI the financial flexibility afforded by Shelf Registration to enter the rapidly changing financial markets at a time or times when economic conditions, interest rates, and other financial provisions appear more favorable, in order to obtain maximum economy, effect the most favorable terms, and obtain the best possible overall cost of money. The form of the Securities (unsecured Senior Debt, unsecured Subordinated Debt, and/or Common Stock) and their terms will be fixed by KMI as indicated by economic and money market conditions at the time; the authority requested herein will make it possible for KMI to move quickly to obtain money on the most favorable terms.

20. Any debt securities issued will be unsecured general obligations of KMI. They may be Senior Debt Securities or Subordinated Debt securities, and may be offered and issued at any time or times. The Senior Debt Securities will rank equally in right of payment with all of KMI's other unsecured senior debt. Any Subordinated Debt Securities will be unsecured and will be subordinate and junior in priority of payment to some of KMI's other debt to the extent described in a prospectus supplement.

21. KMI's articles of incorporation authorize it to issue 150,000,000 shares of Common Stock, par value \$5.00 per share. As of January 15, 2003, there were approximately 129,870,135 shares of KMI's Common Stock issued and outstanding, and as of that date KMI held 8,098,968 shares as treasury stock.

22. Subject to provisions of law, the preferences of KMI's Class A and Class B preferred stock (if any), the holders of shares of KMI's Common Stock are entitled to receive dividends at such time and in such amounts as may be determined by KMI's Board of Directors. The holders of shares of Common Stock are entitled to one vote for each share on each matter

submitted to a vote of KMI's stockholders, and do not have cumulative voting rights in the election of directors. Holders of KMI's Common Stock have no preemptive, subscription, redemption, or conversion rights.

23. The following special terms and conditions are proposed to apply to the securities authorization requested in the Application for so long as KMI is subject to Commission jurisdiction and regulation regarding KMI's securities issuances:

- (a) Within 90 days following the issuance of any Securities under the Shelf Registration, KMI will send an information letter to the Chief of Fixed Utilities of the Commission providing a copy of the prospectus related to such issuance and a report of the results of the issuance.
- (b) KMI will notify the Commission of any failure by KMI to comply with the terms of the Indentures between KMI and Wachovia Bank, National Association, dated January 31, 2003, by sending an information letter to the Chief of Fixed Utilities of the Commission. Wachovia Bank, National Association, will initially act as trustee under the senior indenture and the subordinated indenture.
- (c) In the event that either Standard and Poor's or Moody's credit ratings for KMI's senior unsecured debt are downgraded to below investment grade as defined below, the authority of KMI to thereafter issue any further Securities under the Shelf Registration without further order or approval of the Commission shall be suspended until such time as an investment grade credit rating is restored. During the period of any suspension, KMI shall be required to make such filings for authorization and approval of any and all security issuances as may be required under applicable law at the time of such issuance. Any suspension of authorization to

issue Securities under the Shelf Registration shall not affect the authorization and validity of any securities issued prior to such suspension. Credit ratings for KMI's senior unsecured debt that are less than the following minimum investment grade ratings shall be considered below investment grade for purposes of this provision:

Standard & Poor	BBB-
Moody's	Baa3

24. Unless otherwise indicated in a prospectus supplement, KMI intends to use the net proceeds of any issuance of Securities for general corporate purposes. They may include, among other things, additions to working capital, repayment or refinancing of existing indebtedness or other corporate obligations, financing of capital expenditures and acquisitions, investment in existing and future projects, and repurchases and redemptions of securities. The use and need for the funds may include acquisition of property; the construction, completion, extension, or improvement of KMI's facilities; the improvement or maintenance of KMI's service; the discharge or lawful refunding of KMI's obligations; or the reimbursement of moneys actually expended for said purposes; or any other lawful purpose authorized by the Commission. Pending any specific application, KMI may initially invest funds in short-term marketable securities or apply them to the reduction of other indebtedness.

25. Table II below is a statement of KMI's actual capitalization and the *pro forma* capitalization (assuming the issuance at once of the entire \$2 billion Securities offering) as of December 31, 2002. The *pro forma* capitalization assumes that one-half of this authorization will be in Common Stock and the other one-half will be issued as debt. This is for illustrative purposes. There is no assurance that the authorized Securities will be issued in these proportions when they are actually marketed and the Securities will not be issued all at once. They will be issued from time to time in accord with corporate need and market conditions.

Table II
Kinder Morgan, Inc.
Capital Structure

	Historical December 31, 2003	Adjustments (In Thousands)	<i>Pro Forma</i> December 31, 2002
Long term Debt ²	\$ 2,991,770	\$ 1,000,000	\$ 3,991,770
Minority Interests	967,802		967,802
Common Equity	2,354,997	1,000,000	3,354,997
Capital Trust Securities	275,000		275,000
Total Capitalization	<u>\$ 6,589,569</u>	<u>\$ 2,000,000</u>	<u>\$ 8,589,569</u>

Capitalization:

Long-term Debt	45.4%	46.5%
Minority Interests	14.7%	11.3%
Common Equity	35.7%	39.0%
Capital Trust Securities	4.2%	3.2%

26. KMI contends that this authorization will allow it to issue Senior Debt Securities, Subordinated Debt Securities, or Common Stock as may be indicated by corporate need, economics, and money market conditions at time of issuance and sale. This flexibility in acquiring funds will enable KMI to keep its capital and debt structure properly balanced and to achieve the lowest possible cost of money. The approval sought in this Application is expected to have both short and long-term beneficial consequences to KMI, and will enable KMI to maintain its financial strength.

27. There are substantial timing and economic benefits in a Shelf Registration. The Commission has approved the issuance of securities in connection with KMI Shelf Registrations on at least three prior occasions. Such approvals were granted in Docket No. 92A-335S by

² Adjusted for the fair value of fixed-to-floating interest rate swap agreements.

Decision No. C92-871, Docket No. 94A-069S by Decision No. C94-277, and Docket No. 96A-268S by Decision No. C96-664. At the time of the prior approvals, KMI was a considerably smaller enterprise with corresponding smaller financing requirements. The present application reflects the growth that has occurred in KMI's financial strength and financing requirements since 1996.

C. Conclusions

28. KMI is a public utility subject to the Commission's jurisdiction.

29. KMI's request for authority to issue unsecured senior debt securities, unsecured subordinated debt securities, and/or common stock in any combination in one or more offerings up to an aggregate initial offering price not to exceed \$2 billion with the form, terms, and conditions of the Securities to be determined by KMI at the time of each such offer and sale in accord with economic and money market conditions at the time, is consistent with the provisions of the Public Utilities Law, is for a lawful corporate purpose and, as conditioned in the order provisions below, is consistent with the public interest.

30. The Application should be granted and the hearing date now scheduled for June 20, 2003 should be vacated.

II. ORDER

A. The Commission Orders That:

1. The Application of Kinder Morgan, Inc., filed May 27, 2003 is deemed complete.

2. Kinder Morgan, Inc.'s request for authority, as more fully set forth in its Application, to issue unsecured senior debt securities, unsecured subordinated debt securities, and/or common stock in any combination in one or more offerings up to an aggregate initial

offering price not to exceed \$2 billion, with the form, terms, and conditions of the offered Securities to be determined by Kinder Morgan, Inc., in accord with economic and money market conditions at the time, is authorized and approved.

3. The following special terms and conditions applying to this authorization shall be observed by Kinder Morgan, Inc., for so long as it is subject to Commission jurisdiction regarding its securities issuances:

- (a) Within ninety (90) days following the issuance of any Securities under the Shelf Registration, KMI will provide the Commission with a copy of a prospectus relating to such issuance for informational purposes.
- (b) Kinder Morgan, Inc. shall notify the Commission of any failure by KMI to comply with the Indentures between KMI and Wachovia Bank, National Association, dated January 31, 2003, by writing a letter to the Chief of the Fixed Utility Section of the Staff of the Commission.
- (c) In the event that any credit rating for Kinder Morgan, Inc.'s senior unsecured debt is downgraded by either Standard & Poor's or Moody's to below investment grade as defined below, the authority of KMI to thereafter issue any further securities under the Shelf Registration without further order or approval of the Commission shall be suspended until such time as the credit rating is restored to investment grade. During the period of any suspension, KMI shall be required to make any such filings for authorization and approval of any and all security issuances as may be required under applicable law at the time of such issuance. Any suspension of authorization to issue Securities under the Shelf Registration shall not effect the authorization and validity of any Securities issued prior to such suspension. Any credit rating for KMI's senior unsecured debt that is less than one of the following minimum investment grade ratings shall be considered below investment grade for the purposes of this provision:

Standard & Poor	BBB-
Moody	Baa3
- (d) Nothing herein shall be construed to imply any obligation, recommendation or guaranty of these Securities on the part of the State of Colorado.

4. The authority granted herein shall be exercised from and after the date of this Decision and Order.

5. The hearing with respect of this application now set for June 20, 2003 is vacated.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 18, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners