

Bel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RECEIVED
STATE OF COLORADO
PUBLIC UTILITIES COMM.
2003 DEC -2 AM 9:21

* * * * *

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO FOR A CERTIFICATE OF) DOCKET NO. 99A-029G
PUBLIC CONVENIENCE AND NECESSITY)
TO PROVIDE NATURAL GAS SERVICE)
IN A DESIGNATED AREA WITHIN THE)
NORTHERN FRONT RANGE.)

THE APPLICATION OF K N ENERGY, A)
DIVISION OF KINDER MORGAN, INC., FOR)
A CERTIFICATE OF PUBLIC CONVENIENCE) DOCKET NO. 00A-428G
AND NECESSITY TO PROVIDE NATURAL) (CONSOLIDATED)
GAS SERVICE IN A DESIGNATED AREA)
WITHIN THE NORTHERN FRONT RANGE.)

STIPULATION AND AGREEMENT
BY AND BETWEEN
KINDER MORGAN, INC.
AND
PUBLIC SERVICE COMPANY OF COLORADO

Kinder Morgan, Inc.¹ (Kinder Morgan) and Public Service Company of Colorado (Public Service), collectively referred to as the "Parties," hereby enter into this Stipulation and Agreement and agree to all of the terms and conditions set forth herein. The Parties request that the Colorado Public Utilities Commission (Commission) issue an order adopting and approving the terms and conditions of this Stipulation and Agreement.

¹ At the time its application was filed in Docket No. 00A-428G, Kinder Morgan, Inc. performed its regulated gas utility business in Colorado under the name "K N Energy, a division of Kinder Morgan, Inc." Subsequently, Kinder Morgan changed the name under which it does business as a public utility in Colorado to simply "Kinder Morgan, Inc.," which is its registered corporate name.

Background

1. This proceeding concerns two applications, one filed by Public Service on January 22, 1999 (Public Service's Application), and one filed by Kinder Morgan on July 31, 2000 (Kinder Morgan's Application). In Public Service's Application, Public Service requested that the Commission issue a certificate of public convenience and necessity (CPCN) authorizing it to provide natural gas delivery services in the geographical area along the Front Range of Colorado where it has traditionally provided gas service; *i.e.*, extending roughly from just south of the border between Douglas and Arapahoe Counties, Colorado, to just north of the Fort Collins area (Northern Front Range Gas Service Territory). In Kinder Morgan's Application, Kinder Morgan requested that the Commission issue a CPCN authorizing Kinder Morgan to provide natural gas delivery service in the geographical area along the Front Range of Colorado where it has traditionally provided gas service in and around Dacono, Firestone and Frederick, Colorado (Tri-town Area) and in and around Wellington, Colorado (Wellington Area).

2. The service area for which Public Service requests a CPCN in its Application encompasses several hundred square miles and includes some of the most densely populated areas in Colorado. Public Service recognized in its Application that other natural gas public utilities operating within or adjacent to the proposed service area may intervene and dispute certain of the proposed service area boundaries. At page 13 of its Application, Public Service stated as follows:

In situations involving areas that could be served by extensions of either Public Service's or another gas utility's system, Public Service has proposed territorial boundaries that it believes, based upon available information, are equitable to both utilities. To the extent any such neighboring utilities disagree that the territorial boundary lines proposed herein do not represent an equitable demarcation, Public Service anticipates collaborating with such utilities to resolve such disagreements, both on a formal and informal basis, in the course of the proceeding which the Company anticipates will be established by the Commission to address this Application.

3. With respect to Public Service's Application in Docket No. 99A-029G, timely petitions to intervene were filed by Kinder Morgan, the Colorado Oil and Gas Association, Colorado Natural Gas, Inc., Eastern Colorado Utility Company, Greeley Gas Company, a division of Atmos Energy Corporation, and Peoples Natural Gas Company, a division of UtiliCorp United Inc. Staff of the Public Utilities Commission also filed a timely Notice of Intervention and Entry of Appearance. On July 21, 1999, pursuant to the procedural schedule established in Docket No. 99A-029G, answer testimony and exhibits were filed by Kinder Morgan, Colorado Natural Gas, Inc., Eastern Colorado Utility Company, Greeley Gas Company,² and Peoples Natural Gas Company.³

4. In their testimony and exhibits, all five of the intervening gas utilities objected to the boundary lines proposed in Public Service's Application as between their respective gas distribution systems and service territories and Public Service's proposed service territory. All five intervening utilities further proposed alternative boundary lines which they believed to be more reasonable. In addition, Kinder Morgan took the general position that Public Service had failed to justify its need for a certificate of public convenience and necessity for the remaining areas proposed in its Application.

5. Public Service undertook informal discussions with each of the intervening gas utilities in Docket No. 99A-029G in an attempt to resolve the boundary disputes raised with respect to Public Service's Application. Pursuant to that effort, Kinder Morgan and Public Service reached agreement regarding the boundaries of the respective service territories in the

² At the time of its intervention and answer testimony in Docket No. 99A-029G, Atmos Energy Corporation performed its regulated gas utility business in Colorado under the name "Greeley Gas Company, a division of Atmos Energy Corporation." Subsequently, Atmos Energy Corporation changed the name under which it does business as a public utility in Colorado to simply "Atmos Energy Corporation," which is its registered corporate name.

³ At the time of its intervention and answer testimony in Docket No. 99A-029G, Aquila Inc. performed its regulated gas utility business in Colorado under the name "Peoples Natural Gas Company." Subsequently, Aquila Inc. changed the name under which it does business as a public utility in Colorado to "Aquila Networks-PNG."

front range that should be certificated to each of them by the Commission, and are entering into this Stipulation and Agreement in furtherance of their agreement. The service area agreement between Kinder Morgan and Public Service governs solely the proposals to be made by the Parties to the Commission in these consolidated dockets, is conditional upon and subject to Commission approval, and will not be implemented or acknowledged until an order is issued by the Commission granting certificate authority which adopts and authorizes the respective service areas and service area boundaries between Kinder Morgan's Tri-town Area and Wellington Area and Public Service's Northern Front Range Area.

Terms and Conditions

6. Attached hereto as Appendix A is a legal description of the service area boundaries for Kinder Morgan's proposed certificated service territory in the Tri-town Area and the Wellington area. Attached as Appendix B is a map depicting those service area boundaries. The Parties stipulate and agree that all gas customers that are now located or in the future will be located within these service area boundaries should be served exclusively by Kinder Morgan and that Kinder Morgan is ready, willing and able to provide service to all such customers. The Parties accordingly stipulate and agree that the service area boundaries set forth on Appendices A and B are in the public interest and should be adopted and approved by the Commission in an order granting a CPCN to Kinder Morgan in Docket No. 00A-428G pursuant to an amendment to be filed in that docket reflecting this Stipulation and Agreement and should be adopted and approved by the Commission in an order granting a CPCN to Public Service in Docket No. 99A-029G pursuant to an amendment to be filed in that docket reflecting this Stipulation and Agreement.

7. The agreed upon service area boundaries set forth on Appendices A and B are solely the basis for the proposals to be submitted for approval by the Commission in these consolidated dockets and have not yet been implemented and will not be implemented until they are approved by final order of the Commission. Public Service is presently connected to and

providing gas service to certain customers within Kinder Morgan's proposed service area as reflected in this Stipulation and Agreement, and Kinder Morgan is presently connected to and providing gas service to certain customers within Public Service's proposed service area as reflected in this Stipulation and Agreement. In order to assure a smooth transition and to avoid any disruption or delay in service to customers, following the Commission's approval of their proposed service areas, Public Service and Kinder Morgan shall continue serving these existing customers and any new customers⁴ located within the newly defined certificated area of the other party on a transitional basis until such time as those customers are connected to the distribution systems of the party holding the Commission issued CPCN for the territory in which such customers are located. Public Service and Kinder Morgan each agree to transfer and convey to each other upon request all of their right, title and interest in their various gas distribution facilities, generally consisting of mains, service laterals and meters, which are located in the Commission-approved certificated area of the other utility and which are used to serve such existing or new customers; provided, however, that neither utility shall be required to transfer and convey to the other utility any intermediate or high pressure pipelines and appurtenant facilities which it believes, in its sole discretion, are necessary or useful for its natural gas operations within its own certificated service area. The consideration to be paid to the transferring utility by the acquiring utility for each such conveyance shall be the net book cost of the facilities being conveyed, as determined from the books of the owning utility as of the last day of the preceding month, and determined in accordance with straight-line depreciation and regulatory accounting conventions. Upon conveyance of such facilities, the certificated utility shall assume service responsibility for existing and new customers connected to the conveyed

⁴ Before connecting any new customers to any existing facilities or making any extensions of existing facilities to respond to requests for service connections by new customers within the certificated area of the other utility, notice shall first be given to the certificated utility. If the certificated utility is able to proceed in a timely manner to economically connect such new customers it shall do so. If not, such connection shall be made and service provided by the other utility on a transitional basis, and such facilities shall later be conveyed and service rights and obligations transferred to the certificated utility upon request of the certificated utility.

facilities, and shall provide service to those customers in accordance with its then current tariff on file with the Commission. The Parties stipulate and agree that such transfers are, and will be, in the public interest, and should be approved by the Commission in these dockets pursuant to the Commission's authority under C.R.S. § 40-5-105.

8. Wherever existing or future boundaries of a municipality cross the certificated area boundaries agreed to herein, the certificated area boundaries shall be given effect consistent with this Stipulation and Agreement. In such cases each utility shall act to obtain, maintain or amend its respective franchise agreement with such municipality to the extent necessary to authorize it to provide service within such municipal boundaries that fall within its Commission approved certificated service area. Kinder Morgan and Public Service each agree to take such actions as may be necessary in furtherance of this provision, including, upon request of the other utility, the submission of written statements to the appropriate municipality and the Commission stating that it has no objection to the issuance of municipal franchise authorizations and Commission certificate authorizations to the other utility which are consistent with the certificated service area boundaries set forth herein.

9. The Parties agree to make such filings with the Commission as are necessary to timely effectuate this Stipulation and Agreement, including filing amendments to their existing applications in the above dockets. Such amendments shall be filed by December 31, 2003. The Parties acknowledge that it may be necessary for Kinder Morgan's Application and docket proceeding, which was consolidated with Public Service's Application and docket proceeding, to be unconsolidated in order to effectuate this Stipulation and Agreement without delay. In the event that it reasonably appears that Commission approval of Public Service's Application, as amended by December 31, 2003, will not be forthcoming on a timely basis as a result of any remaining opposition or other unresolved issues tending to delay such approval, Kinder Morgan may file a motion to unconsolidate its Application and proceeding from Public Service's Application and proceeding. Public Service agrees not to oppose such motion for unconsolidation and, if the applications and proceedings are unconsolidated, agrees to support

the granting of a CPCN to Kinder Morgan pursuant to this Stipulation and Agreement in Kinder Morgan's separate docket proceeding.

10. Kinder Morgan agrees to withdraw its general opposition to Public Service's Application in Docket No. 99A-029G and to support the issuance of a CPCN to Public Service that reflects the service territory boundaries between Public Service and Kinder Morgan as set forth in this Stipulation and Agreement.

11. The Parties agree to cooperate with one another in good faith, enter into such further agreements, and to perform such further reasonable acts as may be necessary to obtain Commission approval of the service area boundaries set forth herein and implement the provisions of this Stipulation and Agreement in a timely manner.

12. The Parties agree that the new service area boundaries and proposed certificated areas reflected in this Stipulation and Agreement, and the terms and conditions for rendering service to existing and new customers, on both a transitional and permanent basis, within the newly defined certificated areas, including the conveyance of facilities and transfer of service rights and responsibilities, are just and reasonable, in the public convenience and necessity, and will avoid duplication of services and facilities between Kinder Morgan and Public Service, and should be approved by the Commission.

13. The Parties state that approval and implementation of the compromises and settlements reflected in this Stipulation and Agreement will result in savings to all concerned by avoiding litigation, and that the results of such compromises are a just and reasonable resolution of this proceeding. Each party hereto pledges its support of this Stipulation and Agreement and urges the Commission to approve same. For those Parties hereto for whom this Stipulation and Agreement is executed by counsel, such counsel states that it has authority to execute this Stipulation and Agreement on behalf of its client(s).

14. This Stipulation and Agreement is entered into by the Parties solely for the purpose of settling the issues related to these dockets and nothing herein shall constitute a waiver by either party with respect to any matter not specifically addressed herein.

15. Nothing said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation and Agreement may be used in this or any other administrative or court proceeding by either of the Parties.

16. Approval of this Stipulation and Agreement shall constitute a determination that this Stipulation and Agreement represents a just, equitable and reasonable resolution of all issues which were or could have been contested by the Parties in these dockets.

17. This Stipulation shall not become effective and shall be of no force and effect until the issuance of a final Commission order which accepts and approves this Stipulation and Agreement as to all of its terms and conditions. If this Stipulation is rejected by the Commission, then this Stipulation shall be null and void and of no force and effect in this or any other proceeding. In the event the Commission imposes conditions or modifications to its approval of this Stipulation which are not acceptable to either party hereto, such party shall notify the other party within twenty (20) days after the date the Commission's decision becomes final, which shall be effective notice to render this Stipulation null and void, whether or not any tariff sheets filed pursuant to the terms hereof would otherwise be scheduled to go into effect.

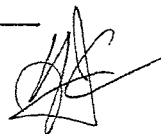
18. This Stipulation and Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Stipulation and Agreement.

DATED this 1st day of December, 2003.

KINDER MORGAN, INC.

By: 

Daniel E. Watson
President, Retail

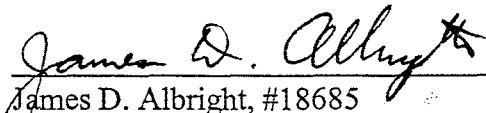


PUBLIC SERVICE COMPANY OF COLORADO

Attachment B
Docket No. 99A-029G
Decision No. R04-0026
January 8, 2004
Page 9 of 17

Approved As To Form:

By: 
Fredric C. Stoffel
Vice President, Policy Development
Xcel Energy Services Inc.


James D. Albright, #18685
Assistant General Counsel
Xcel Energy Services Inc.
1225 17th Street, Suite 900
Denver, CO 80202

Attorney for Public Service Company
of Colorado

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2003, an original and five true and correct copies of the foregoing document, entitled **"STIPULATION AND AGREEMENT BY AND BETWEEN KINDER MORGAN, INC. AND PUBLIC SERVICE COMPANY OF COLORADO"** was hand delivered to:

Bruce Smith, Director
Colorado Public Utilities Commission
1580 Logan OL2
Denver, CO 80203

and a copy was placed in the United States Mail, postage prepaid and addressed to:

T.J. Carroll
Vice President and General Counsel
Kinder Morgan, Inc.
370 Van Gordon Street
P.O. Box 281304
Lakewood, CO 80228-8304

Alvin J. Meiklejohn, Jr.
Jones & Keller, P.C.
1625 Broadway, Suite 1600
Denver, CO 80202

Anne K. Botterud
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

David A. Beckett
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

David M. Nocera
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

Michael J. Santisi
Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

Karen Ostrander-Krug, Esq.
Krug Sobel & Ritter, LLC
1700 Broadway, Suite 508
Denver, CO 80290

Timothy Johnston
Vice President
Colorado Natural Gas, Inc.
P.O. Box 719
Pine, CO 80470-0719

Thomas R. O'Donnell, Esq.
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202

Joseph F. Schmitt, President
Eastern Colorado Utility Company
P.O. Box 575
Strasburg, CO 80136-0575

Douglas C. Walther, Esq.
Atmos Energy Corporation
P.O. Box 650205
Dallas, TX 75265-0205

Joe T. Christian, Vice President
Rates & Regulatory Affairs
Greeley Gas Company
1301 Pennsylvania Street, Ste 800
Denver, CO 80203

Steven H. Denman, Esq.
Abel, Band, Russell, Collier, Pitchford
& Gordon, Chartered
240 South Pineapple Avenue
Post Office Box 49948
Sarasota, FL 34230-6948

Ms. Debra Keim
Aquila Inc.
1815 Capitol Avenue
Omaha, NE 68102

Stephen W. Southwick, Esq.
First Assistant Attorney General
Office of Consumer Counsel Unit
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

G. Harris Adams, Esq.
Assistant Attorney General
Business and Licensing Section
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Anthony Marquez, Esq.
Assistant Attorney General
State Services Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

Paul C. Gomez, Esq.
Assistant Attorney General
State Services Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

Simon Lipstein
Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Sandra Johnson Jones
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

Billy Kwan
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

Randy Garrouette
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

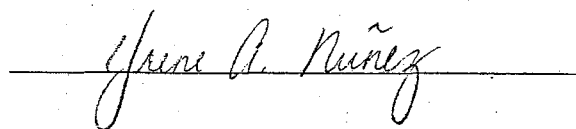
Vinson Snowberger
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

Gary Schmitz
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

Michael Zimmerman
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

Robert Bergman
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

Frank Shafer
Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203


June A. Nuñez

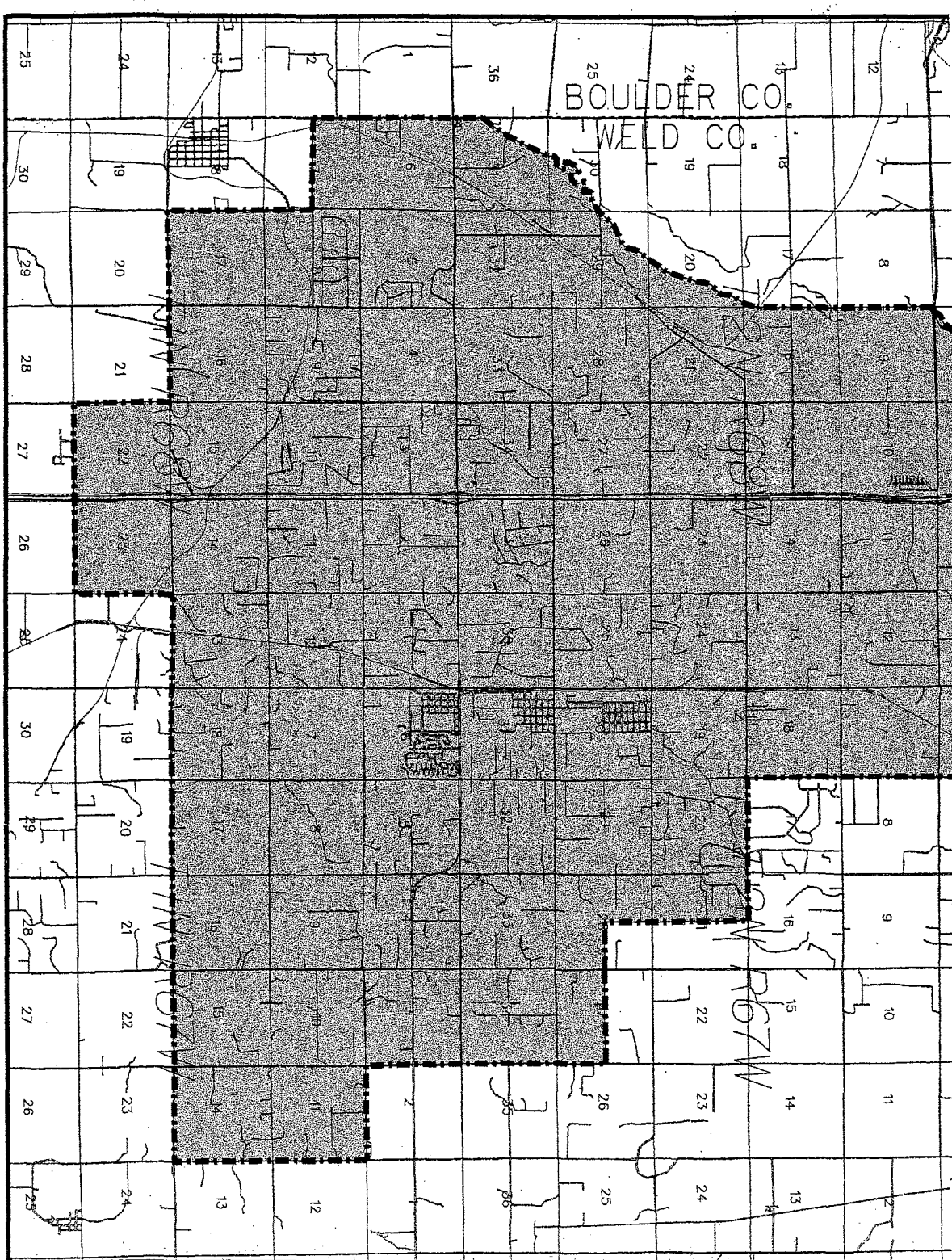
I. Tri-Town Service Area (Towns of Firestone, Frederick and Dacono, Colorado):

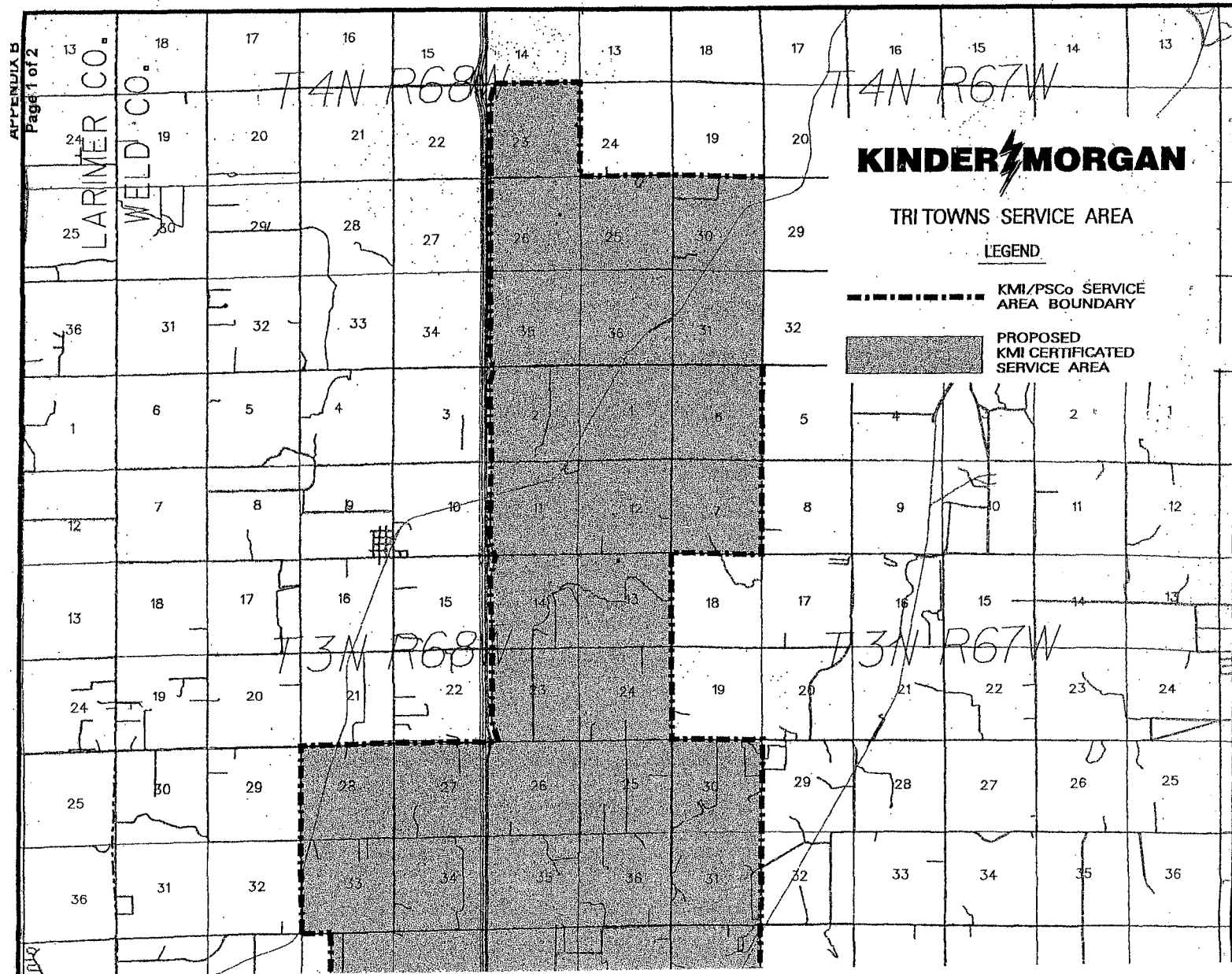
Starting at the northeast corner of Section 6, T3N, R67W, 6th P.M., Weld County, Colorado; thence south $\approx$ 2 miles to the southeast corner of Section 7, T3N, R67W; thence west $\approx$ 1 mile to the northwest corner of Section 18, T3N, R67W; thence south $\approx$ 2 miles to the south right-of-way of Colorado State Highway 66 at a point on or near the southwest corner of Section 19, T3N, R67W; thence east $\approx$ 1 mile along the south right-of-way of Colorado State Highway 66 to the southeast corner of Section 19, T3N, R67W; thence south $\approx$ 5 miles to the northeast corner of Section 19, T2N, R67W; thence east $\approx$ 1.5 miles to the north quarter corner of Section 21, T2N, R67W; thence south $\approx$ 1.5 miles to the center point of Section 28, T2N, R67W; thence east $\approx$ 1.5 miles to the east quarter corner of Section 27, T2N, R67W; thence south $\approx$ 2.5 miles to the northwest corner of Section 11, T1N, R67W; thence east $\approx$ 1 mile to the northeast corner of Section 11, T1N, R67W; thence south $\approx$ 2 miles to the southeast corner of Section 14, T1N, R67W; thence west $\approx$ 6 miles to the northeast corner of Section 23 T1N, R68W; thence south $\approx$ 1 mile to the southeast corner of Section 23, T1N, R68W; thence west $\approx$ 2 miles to the southwest corner of Section 22, T1N, R68W; thence north $\approx$ 1 mile to the northwest corner of section 22, T1N, R68W; thence west $\approx$ 2 miles to the southwest corner of Section 17, T1N, R68W., thence north $\approx$ 1.5 miles to the west quarter corner of Section 8, T1N, R68W; thence west $\approx$ 1 mile to the west quarter corner of Section 7, T1N, R68W; thence north $\approx$ 1.75 miles to a point of intersection at or near the west section line of Section 31, T2N, R68W, and Boulder Creek; thence $\approx$ 3.5 miles in a generally northeasterly direction along Boulder Creek until the first point of intersection between Boulder Creek and the east section line of Section 17, T2N, R68W; thence north $\approx$ 1.8 miles to the south right-of-way of State Highway 119 at or near the southwest corner of Section 4, T2N, R68W; thence east $\approx$ 1/10th of a mile to a point that is directly south of the intersection of the north right-of-way of State Highway 119 and the east right-of-way of Weld County Road 5.5; thence north across the highway to the intersection of the north right-of-way of State Highway 119 and the east right-of-way of Weld County Road

5.5; thence generally northeasterly and then north $\approx$ 1 mile along the east right-of-way of Weld County Road 5.5 to a point on the south section line of Section 33, T3N, R68W; thence west $\approx$ $1/3^{\text{rd}}$ of a mile to the southwest corner of Section 33, T3N, R68W; thence north $\approx$ 2 miles to the south right-of-way of Colorado State Highway 66 at or near the northwest corner of Section 28, T3N, R68W; thence east $\approx$ 2 miles to the east right-of-way of Interstate Highway 25 at or near the southwest corner of Section 23, T3N, R68W; thence north $\approx$ 7 miles along the east right-of-way of Interstate Highway 25 to the south right-of-way of Colorado State Highway 56 and/or Weld County Road 44 at or near the northwest corner of Section 23, T4N, R68W; thence east $\approx$ 1 mile along the south right-of-way of Weld County Road 44 to the northeast corner of Section 23, T4N, R68W; thence south $\approx$ 1 mile to the southeast corner of Section 23, T4N, R68W; thence east $\approx$ 2 miles to a point of termination at the southeast corner of Section 19, T4N, R67W.

II. Wellington, Colorado Service Area:

Starting at the northwest corner of Section 20, T10N, R68W, 6th P.M., Larimer County, Colorado; thence south $\approx$ 6 miles to the southeast corner of Section 18, T9N R68W; thence west $\approx$ 1 mile to the southwest corner of Section 18, T9N, R68W; thence south $\approx$ 3 miles to the southwest corner of Section 31, T9N, R68W; thence east $\approx$ $1/10^{\text{th}}$ of a mile to the northwest corner of Section 6, T8N, R68W; thence south $\approx$ 1 mile to the southwest corner of Section 6, T8N, R68W; thence east $\approx$ 1 mile to the northwest corner of Section 8, T8N, R68W; thence south $\approx$ 1 mile to the southwest corner of Section 8, T8N, R68W; thence east $\approx$ 1 mile to the northwest corner of Section 16, T8N, R68W; thence south $\approx$ 1 mile to the southwest corner of Section 16, T8N, R68W; thence east $\approx$ 1 mile to the east right-of-way of Interstate Highway 25 at or near the southwest corner of Section 15, T8N, R68W; thence south $\approx$ 1 mile along the east right-of-way of Interstate Highway 25 to a point on the north section line of Section 27, T8N, R68W; thence east $\approx$ 2 miles to the southeast corner of Section 23, T8N, R68W; thence north $\approx$ 1 mile to a point of termination at the northeast corner of Section 23, T8N, R68W.





APPENDIX B
Page 2 of 2

