

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-113G

IN THE MATTER OF THE JOINT APPLICATION OF KINDER MORGAN, INC., AND ROCKY MOUNTAIN NATURAL GAS COMPANY FOR AN ORDER GRANTING APPROVALS AND EXCLUSIVE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING: (1) KINDER MORGAN, INC., TO CONSTRUCT AND OPERATE NATURAL GAS DISTRIBUTION FACILITIES AND TO PROVIDE NATURAL GAS SERVICES IN ACCORDANCE WITH ITS APPLICABLE TARIFF WITHIN A PROPOSED GEOGRAPHIC SERVICE TERRITORY IN AND AROUND THE TOWN OF WHITEWATER IN MESA COUNTY, COLORADO, AND (2) ROCKY MOUNTAIN NATURAL GAS COMPANY TO CONSTRUCT AND OPERATE NATURAL GAS FACILITIES AND TO ADD TWO ADDITIONAL WHOLESALE NATURAL GAS SERVICE DELIVERY POINTS TO KINDER MORGAN, INC., IN ORDER TO SERVICE KINDER MORGAN'S GAS SUPPLY REQUIREMENTS FOR ITS PROPOSED WHITEWATER SERVICE TERRITORY IN MESA COUNTY, COLORADO, IN ACCORDANCE WITH ROCKY MOUNTAIN'S APPLICABLE TARIFF.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING UNOPPOSED PETITION,
VACATING PROCEDURAL SCHEDULE,
SCHEDULING PREHEARING CONFERENCE,
LISTING ISSUES FOR DISCUSSION, AND
EXTENDING DATE FOR COMMISSION DECISION**

Mailed Date: May 11, 2004

I. STATEMENT

1. On March 12, 2004, Rocky Mountain Natural Gas Company (RMNG) and Kinder Morgan, Inc. (KMI) (collectively, Applicants), filed a Verified Joint Application (Application). Applicants seek approvals and Certificates of Public Convenience and Necessity, as more specifically described in the Application, necessary to provide natural gas service within a proposed Whitewater Service Territory in Mesa County and to construct and to operate facilities

necessary to provide service in that proposed service territory. Applicants filed their direct testimony and exhibits with the Application. The Application commenced this proceeding.

2. On March 15, 2004, the Commission gave public notice of the Application. *See* Notice of Application Filed, dated March 15, 2004 (Notice). In that Notice, the Commission established an intervention period and a procedural schedule. By this Order, the undersigned Administrative Law Judge (ALJ) will vacate the procedural schedule set out in the Notice.

3. On April 15, 2004, Public Service Company of Colorado (PSCo) filed a Petition to Intervene and Request for Hearing. The time for responding to the Petition to Intervene (Petition) has expired, and no one filed a response. The Petition states good grounds and satisfies the requirements of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-64(a), which governs intervention by right, in that PSCo has demonstrated the existence of a legally protected right in the subject matter of this proceeding which may be affected (for example, PSCo claims that it “is better situated to provide natural gas service to new customers at less cost than KMI” (Petition at ¶ 4) and that construction of new facilities by KMI or RMNG would duplicate PSCo’s existing facilities (*id.* at ¶¶ 5 and 10)). As no party opposed the Petition, granting the Petition will not prejudice any party. The Petition will be granted, and PSCo will be a party in this proceeding. PSCo opposes the granting of the Application.

4. The Commission deemed the application complete as of April 19, 2004. *See* Minute Order dated April 28, 2004.

5. On May 10, 2004, Staff of the Commission (Staff) intervened of right and requested a hearing in this matter. Staff contests the Application.

6. It is necessary to schedule a hearing and to establish a procedural schedule in this proceeding. To do so, a prehearing conference will be held on May 28, 2004. The provisions of Rules 4 CCR 723-1-79(b)(3) and 4 CCR 723-1-79(b)(4) govern this prehearing conference.

7. The parties should be prepared to discuss these matters at the prehearing conference: (a) date by which PSCo and Staff each will file its answer testimony and exhibits; (b) date by which Applicants will file their rebuttal testimony and exhibits; (c) date by which PSCo and Staff each will file its cross-answer testimony and exhibits; (d) date(s) by which each party will file its corrected testimony and exhibits; (e) date by which each party will file its prehearing motions;¹ (f) whether a final prehearing conference is necessary and, if it is, date for that prehearing conference; (g) date by which the parties will file any stipulation reached;² (h) hearing dates; and (i) whether there should be post-hearing statements of position and, if so, the date for post-hearing statements of position and whether responses should be permitted. In addition, the parties should present discovery procedures if they think Rule 4 CCR 723-1-77 may not suffice. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Parties may raise any additional issues.

8. In considering proposed dates, parties should keep in mind that the Commission deemed the Application complete as of April 29, 2004. Absent Applicants' waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in this proceeding should issue within 210 days of that date (*i.e.*, November 26, 2004).³ See §§ 40-6-

¹ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

² This date should be at least seven calendar days before the first day of hearing.

³ By this Order the ALJ finds that, due to the complex factual and legal issues presented in this proceeding, 120 days will likely be insufficient time for a Commission decision and that additional time is required. The ALJ, therefore, will extend the time for Commission decision an additional 90 days. See § 40-6-109.5(1), C.R.S.

109.5(1) and 40-6-109.5(4), C.R.S. Any procedural schedule must take into consideration, and allow time for, preparation of a recommended decision, preparation of exceptions to the recommended decision and response to exceptions, and preparation of a Commission decision on exceptions,⁴ all of which should occur by November 26, 2004.

9. The parties are advised that the ALJ is unavailable from September 10 through and including 27, 2004.

10. The undersigned expects the parties to consult prior to the prehearing conference with respect to the listed matters. The parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to both parties.

II. **ORDER**

A. **It Is Ordered That:**

1. The procedural schedule established in the Notice of Application Filed, dated March 15, 2004, is vacated.

2. The Petition to Intervene filed by Public Service Company is granted.

3. A prehearing conference in this docket is scheduled as follows:

DATE: May 28, 2004
TIME: 10:00 a.m.
PLACE: Commission hearing Room
1580 Logan Street, OL2
Denver, Colorado

⁴ As a general rule and not including the time necessary for preparation of a transcript if one is ordered, these activities consume 10 to 12 weeks from the latter of: the last day of hearing, the filing of the statements of position, or the filing of responses to statements of position.

4. Absent further Order, the time for Commission decision in this matter is extended to and including November 26, 2004.

5. The parties shall follow the procedures, and be prepared to discuss the matters, as set forth above.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge