

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-545SG

IN THE MATTER OF THE APPLICATION OF KINDER MORGAN, INC. FOR APPROVAL TO ISSUE, ASSUME, OR GUARANTEE SECURITIES FROM TIME-TO-TIME PURSUANT TO AN \$800 MILLION REVOLVING CREDIT FACILITY, SUBJECT TO INCREASE UP TO AN AGGREGATE COMMITMENT NOT TO EXCEED \$1 BILLION.

ORDER GRANTING APPLICATION

Mailed Date: November 10, 2004
Adopted Date: November 10, 2004

I. BY THE COMMISSION

A. Statement

1. On October 25, 2004, Applicant 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, assume, or guarantee securities as may be needed from time-to-time pursuant to an \$800 million five-year revolving credit facility, subject to increase up to an aggregate commitment not to exceed \$1 billion. On November 5, 2004, KMI made a Supplemental Filing and Request for Waiver containing certain updated financial information and requesting such waivers as the Commission may deem necessary.

2. The Commission issued notice of the Application on October 27, 2004 to all interested persons, firms, and corporations. A hearing relating to the merits of the Application has been scheduled for November 12, 2004. Additionally, KMI caused notice of the filing of this Application to be published in the *Denver Post* legal notices on October 27, 2004. The

newspaper publication provided that comments or interventions should be filed with the Commission on or before November 4, 2004. The Commission's mailed Notice required that comments or requests for intervention be filed on or before November 11, 2004. 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 130 terminals. KMI owns the general partner interest of Kinder Morgan Energy Partners, L.P. (KMP), the largest publicly traded pipeline limited partnership in the United States in terms of market capitalization. Combined, the two companies have an enterprise value of approximately \$24 billion. KMI's 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 transporting 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 2003, it delivered an average of 1.76 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 20 miles southwest of Meeker, Colorado to Bloomfield, New Mexico, has 20 points of interconnection with interstate pipelines, an intrastate pipeline, gathering and local distribution companies. TransColorado is the largest transporter 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 242,000 customers in Colorado, Nebraska, and Wyoming through more than 11,000 miles of distribution and transmission 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.

7. Kinder Morgan Power is the portion of KMI's business that operates electric generation facilities as an independent power producer. It currently operates three power plants located in two states.

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, Lazear, Mesa, Molina, Montrose, Naturita, Norwood, Nucla, Olathe, Orchard City, Ouray, Paonia, Placerville, Plateau City, Redvale, Ridgway, 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 (Rocky Mountain), a wholly-owned subsidiary of KMI, operates a transmission system that consists of approximately 800 miles of pipe that extends from Eagle to San Miguel and Ouray Counties, Colorado. Rocky Mountain also operates the Wolf Creek Storage Field as part of its system.

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 these 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, 2003:

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
2003	\$1,097,897

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

¹ *See* Decisions No. 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.

once again become exempt under the 5 percent tests set forth in § 40-1-104, C.R.S. For the 12 months ended September 30, 1997, KMI's Colorado public utility revenues of \$44,776,402 amounted to 2.4 percent of KMI's total consolidated gross revenues for that period, well under the 5 percent threshold. Nor did KMI supply an amount of energy equal to 5 percent or more of Colorado's consumption. Base upon these facts the Director of the Commission sent KMI a letter dated January 30, 1998, agreeing that KMI was not subject to Commission jurisdiction over its securities.

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 2003 Kinder Morgan Retail's Colorado operations had gross utility revenues of \$72,703,130 compared to total KMI consolidated gross revenues (excluding the revenues of its affiliate KMP) for calendar year 2003 of \$1,097,897,000. This resulted in a Colorado utility revenue percentage calculation of 6.6 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 0.9 percent.

17. In 2002 KMI resumed filing securities applications with the Commission (*see* Decision Nos. C02-1100 and C02-1329) to ensure compliance with Colorado law and Commission regulations to the extent applicable.

18. The principal terms and conditions of the present \$800 million revolving credit facility which is the subject of this Application follow:

**Kinder Morgan, Inc.
\$800,000,000 Revolving Credit Facility**

Borrower:	Kinder Morgan, Inc., a Kansas corporation (the "Borrower").
Joint Lead Arrangers & Joint Book Managers:	Citigroup Global Markets, Inc. and Wachovia Capital Markets, LLC (collectively, the "Joint Lead Arrangers").
Administrative Agent:	Citibank, N.A. ("Citibank") will act as sole and exclusive Administrative Agent.
Co-Syndication Agents:	Wachovia Bank, National Association and JPMorgan Chase Bank.
Lenders:	A syndicate of banks or financial institutions arranged by the Joint Lead Arrangers, which institutions shall be acceptable to the Borrower and the Joint Lead Arrangers.
Facility Amount:	\$800,000,000 5-Year revolving credit facility, subject to increase as provided below (the "Facility").
Maturity Date:	Five years from the closing date.
Increase of Facility:	The Borrower shall have the right to increase the amount of the Facility by either adding additional lender(s) or, with the consent of any existing Lender(s), increasing the commitment(s) of such existing Lender(s); provided that: (a) the aggregate commitments under the Facility shall not exceed \$1,000,000,000; (b) no Lender's commitment shall be increased without such Lender's consent; and (c) no default or event of default shall have occurred and be continuing.
Use of Proceeds:	Refinancing the outstanding amounts under the Borrower's existing credit facilities, commercial paper issuance, working capital and other lawful corporate purposes.
Borrowing Rates:	A formula as set forth in the Summary of Terms and Conditions of Appendix 10.
Closing:	On or prior to August 31, 2004.

19. KMI intends to use the revolving credit facility for working capital and other general corporate purposes, including backup for KMI's commercial paper program.

C. Conclusions

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

21. KMI's request for authority to issue, assume, or guarantee securities as may be needed from time-to-time pursuant to an \$800 million five-year revolving credit facility, subject to an aggregate commitment not to exceed \$1 billion, 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.

22. A number of firms investigate, analyze, and maintain records on credit responsibility of individuals and businesses. Standard and Poor's Corporation (S&P) and Moody's Investor Services (Moody's) often review the credit worthiness of large corporations and, following their independent review, assign bond ratings which categorize their assessment of risk associated with the company's credit history and capability of repaying existing obligations. Currently, S&P has assigned KMI's senior unsecured debt a rating of BBB. Similarly, Moody's has assigned KMI's senior unsecured debt a rating of Baa3. Bonds rated BBB by S&P and Baa by Moody's or better are considered Bank quality bonds or investment grade bonds suitable for purchase by commercial banks, fiduciaries, mutual savings banks, trust companies, and insurance companies. Bonds given lower ratings are considered speculative investments.

23. This Commission does not assign a bond or credit rating to any company or debt obligation. The Commission in assessing the merits of any securities filing may consider the credit rating assessments provided by other entities; however, the Commission is under no obligation to approve or deny any securities pleading based on such assessments.

24. Nothing herein shall be construed to imply any recommendation or guarantee of, or any obligation with respect to, said securities on the part of the Colorado Public Utilities Commission or the State of Colorado.

25. The Application should be granted and the hearing date now scheduled for November 12, 2004, should be vacated.

II. ORDER

A. The Commission Orders That:

1. The Application of Kinder Morgan, Inc. filed October 25, 2004, is deemed complete.

2. Kinder Morgan, Inc.'s request for authority, as more fully set forth in its Application, to issue, assume, or guarantee securities as may be needed from time-to-time pursuant to an \$800 million five-year revolving credit facility, subject to increase up to an aggregate commitment not to exceed \$1 billion, is authorized and approved.

3. Kinder Morgan, Inc. shall notify the Commission in the event any credit rating for Kinder Morgan, Inc.'s senior unsecured debt is downgraded below investment grade by Standard and Poor to a rating below BBB-, or by Moody's Investor Services to a rating below Baa3.

4. The hearing with respect of this Application now set for November 12, 2004, is vacated.

5. Kinder Morgan, Inc.'s Supplemental Filing and Request for Waiver filed on November 5, 2004, is granted.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 10, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners