

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

_____)
In the Matter of)
) **Docket No. C-4355**
Kinder Morgan, Inc.,)
 a corporation.)
_____)

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Redacted Public Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Kinder Morgan, Inc. (“Kinder Morgan” or “Respondent”) of the outstanding voting securities of El Paso Corporation (“El Paso”), and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following

jurisdictional findings, and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Kinder Morgan is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 500 Dallas Street, Suite 1000, Houston, Texas 77002.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Hold Separate Order, the following definitions shall apply:

- A. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger, dated as of October 16, 2011, among Kinder Morgan, Inc., Sherpa Merger Sub, Inc., Sherpa Acquisition, LLC, Sirius Holdings Merger Corporation, Sirius Merger Corporation, and El Paso Corporation.
- B. “Acquisition Date” means the date the Acquisition is consummated.
- C. “Confidential Business Information” means competitively sensitive, proprietary, and all other business information of any kind, except for any information that Respondent demonstrates (i) was or becomes generally available to the public other than as a result of a disclosure by Respondent, or (ii) was available, or becomes available, to Respondent on a non-confidential basis, but only if, to the knowledge of Respondent, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- D. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission.
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- E. “Direct Cost” means the actual cost of labor, including employee benefits, materials, resources, and services plus the actual cost of any third-party charges.
- F. “Divestiture Date” means, with regard to any of the KM Pipeline Assets, the date on which Respondent (or a Divestiture Trustee) closes on the divestiture of those assets

completely and as required by Paragraph II. (or Paragraph IV.) of the Decision and Order.

- G. “El Paso Rockies Pipeline Business” means El Paso’s business of providing natural gas transportation services and any related natural gas processing, treatment, storage, and pipeline operating services through the Cheyenne Plains Gas pipeline system (“CPG”), Colorado Interstate Gas pipeline system (“CIG”), and the Wyoming Interstate Company gas pipeline system (“WIC”).
- H. “Employment Information” means employment information relating to a relevant employee, to the extent permitted by law, including, but not limited to, name, job title, date of hire, description of job responsibilities, salary or wages, and employment benefits.
- I. “Hold Separate Business” means (i) the commercial/account services, regulatory, gas control, gas accounting, scheduling, storage, and field operations functions of the KM Pipeline Business; (ii) the KM Pipeline Assets; and (iii) the KM Pipeline Employees depicted on the Hold Separate Business organizational chart attached to this Hold Separate Order as Confidential Appendix A; *provided, however*, that the functional areas of the Hold Separate Business and the organizational chart depicted in Confidential Appendix A may be revised by the Hold Separate Trustee, if necessary, to accomplish the purposes of this Hold Separate Order, in consultation with Commission staff.
- J. “Hold Separate Employee” means any Person employed in the Hold Separate Business; *provided, however*, that Hold Separate Employees shall not include the employees listed in Confidential Appendix B.
- K. “Hold Separate Manager” means any Person appointed to manage and maintain the operations of the Hold Separate Business pursuant to Paragraph IV.A. of this Hold Separate Order.
- L. “Hold Separate Trustee” means any Person appointed pursuant to Paragraph III. of this Hold Separate Order.
- M. “Interstate Pipeline Systems” means:
 - 1. Kinder Morgan Interstate Gas Transmission LLC (“KMIGT”), which includes approximately 5,100 miles of transmission lines in Colorado, Kansas, Nebraska, Missouri, and Wyoming;
 - 2. Rockies Express Pipeline LLC (“REX”), a natural gas pipeline system in which Kinder Morgan owns a fifty (50) percent membership interest, which includes an approximately 1,679 mile natural gas pipeline originating at a point near Meeker, in Rio Blanco County, Colorado and terminating at a point near Clarington, in Monroe county, Ohio; and

3. Trailblazer Pipeline Company LLC (“Trailblazer”), a natural gas pipeline system that includes a 436-mile natural gas pipeline originating at an interconnection with Wyoming Interstate Company, LLC’s pipeline system near Rockport, Colorado and runs through southeastern Wyoming to a terminus near Beatrice, Nebraska.
- N. “KM Pipeline Assets” means all of Kinder Morgan’s right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the KM Pipeline Business.
- O. “KM Pipeline Business” means Kinder Morgan’s business of providing natural gas transportation services and any related natural gas processing, treatment, storage, and pipeline operating services through and/or in connection with the Interstate Pipeline Systems.
- P. “KM Pipeline Employees” means any full-time, part-time, or contract Person (i) employed by Respondent at any time from the date Respondent signs the Consent Agreement, and (ii) whose job responsibilities primarily relate to the KM Pipeline Business.
- Q. “Support Services” means the gas pipeline and corporate functions that support a range of Respondent’s businesses (including the KM Pipeline Business), including, but not limited to, engineering and technical services, project management, land and right of way, operations support, environmental, health and safety, information technology, human resources, administrative, corporate communications, financial reporting and corporate accounting, and legal and risk management services.
- R. “Support Services Employee” means any Respondent employee who provides Support Services to the Hold Separate Business pursuant to Paragraph V.B. of this Hold Separate Order.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall:
1. Hold the Hold Separate Business separate, apart, and independent of Respondent’s other businesses and assets as required by this Hold Separate Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business;
 2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Hold Separate Trustee, or the Hold Separate Manager except to the extent that Respondent must exercise direction

and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws; and

3. Take such actions as are necessary to maintain and assure the continued viability, marketability, and competitiveness of the Hold Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair the Hold Separate Business (except as required by the Decision and Order).
- B. The purpose of this Hold Separate Order is to (1) preserve the Hold Separate Business as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order; and (3) prevent interim harm to competition pending the divestiture and other relief.

Respondent in the ordinary course of business that relate to the Hold Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may reasonably request.

3. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
4. The Commission may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.
5. Respondent may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement, *provided, however,*

Separate Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld, as follows:

1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Hold Separate Trustee, then Respondent shall be deemed to have consented to the selection of the proposed substitute trustee.
2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Hold Separate Trustee, enter into an agreement with the substitute Hold Separate Trustee that, subject to the approval of the Commission, confers on the substitute Hold Separate Trustee all the rights, powers, and authority necessary to permit the substitute Hold Separate Trustee to perform his or her duties and

2. The Hold Separate Manager shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
3. The Hold Separate Manager, in consultation with the Hold Separate Trustee, shall have the authority to employ such Persons as are reasonably necessary to assist the Hold Separate Manager in managing the Hold Separate Business, including consultants, accountants, attorneys, and other representatives and assistants.
4. Respondent shall provide the Hold Separate Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all applicable employee benefits, including regularly scheduled raises, bonuses, vesting of retirement benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability and competitiveness, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.
5. The Hold Separate Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
6. Respondent shall indemnify the Hold Separate Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liability results, in connection with the performance of his duties, from the cost of the Hold Separate Order.

and replacing such employee with another person of similar experience or skills.

- (c) Ensuring that no Hold Separate Employee shall (i) be involved in any way

3. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, or expansion projects.
4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to: (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however,* that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Trustee, the Hold Separate Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

F. No later than ten (10) days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.

G.

For purposes of this Paragraph VI.A., Respondent's employees who provide Support Services or staff the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

- B. If access or disclosure of Confidential Business Information of the Hold Separate Business to Respondent's employees is necessary, and permitted, under Paragraph VI.A. of this Hold Separate Order, Respondent shall:
1. Implement and maintain a process and procedures, as approved by the Hold Separate Trustee, pursuant to which Confidential Business Information of the Hold Separate Business may be disclosed or used (i) only to those employees who require such information, (ii) only to the extent such Confidential Business Information is required, and (iii) only after such employees have signed an appropriate agreement in writing to maintain the confidentiality of such information.
 2. Enforce the terms of this Paragraph VI. as to any of Respondent's employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph VI., including training of Respondent's employees and all other actions that Respondent would take to protect its own trade secrets and proprietary information.
- C. Respondent shall implement, and maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate Order.

VII.

IT IS FURTHER ORDERED that the Commission may on its own initiative or at the request of the Hold Separate Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order.

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of Respondent;
- B. acquisition, merger or consolidation of Respondent; or

- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with five (5) days' notice to Respondent made to its principal United States office, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent related to compliance with the Consent Agreement and/or this Hold Separate Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from them, to interview officers, directors, or employees of Respondent, who may have counsel present.

X.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after Respondent has completed its obligations to provide Transitional Assistance under Paragraph II.D. of the Decision and Order.

By the Commission, Commissioner Ramirez recused.

Donald S. Clark
Secretary

SEAL
ISSUED: May 1, 2012

Confidential Appendix A

[Hold Separate Organizational Chart]

[Redacted From the Public Record Version, But Incorporated By Reference]

Confidential Appendix B

[Redacted From the Public Record Version, But Incorporated By Reference]