

with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“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 Order, the following definitions, and all other definitions used in the Hold Separate Order, shall apply:

- A. “Kinder Morgan” means Kinder Morgan, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Kinder Morgan, Inc. (including, but not limited to, Kinder Morgan Energy Partners L.P. and Kinder Morgan Management LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Kinder Morgan includes El Paso, after the Acquisition Date.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means any Person that receives the prior approval of the Commission to acquire any of the KM Pipeline Assets pursuant to this Decision and Order.
- D. “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.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without

limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.

- G. “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 wrongful 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.
- H. “Direct Cost” means the actual cost of labor, including employee benefits, materials, resources, and services plus the actual cost of any third-party charges.
- I. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase all or any of the KM Pipeline Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- J. “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 this Order.
- K. “El Paso” means El Paso Corporation, 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 1001 Louisiana Street, Houston, Texas 77002.
- L. “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”).
- M. “Hold Separate Business” means the business that Respondent shall hold separate pursuant to the Hold Separate Order.

N. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Kinder Morgan, in which Kinder Morgan has a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications and inventions, and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans,

1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the KM Pipeline Business since the date of the announcement of the Acquisition, and not replaced, if such property was used in connection with the operations of the KM Pipeline Business prior to the Acquisition Date;
3. All inventories, wherever located;
4. All (a) trade accounts receivable and other rights to payment from customers of Kinder Morgan and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Kinder Morgan and the full benefit of all security for such accounts or notes and (c) any claim, remedy, or other right related to any of the foregoing;
5. All agreements and contracts with customers (including but not limited to agreements, contracts, and understandings for transportation, storage, and other services), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto;
6. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;
7. All intangible rights and property, including Intellectual Property (subject to an IP License-Back to Respondent), going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
8. All Business Records; *provided, however*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the KM Pipeline Assets to be divested and to Respondents' retained assets or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the KM Pipeline Assets to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the

Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

9. All insurance benefits, including rights and proceeds; and
10. All rights relating to deposits and prepaid expenses, claims for refunds, and rights to offset in respect thereof.

Provided, however, that the KM Pipeline Assets need not include:

- i. Assets whose use is shared between the KM Pipeline Business and other Kinder Morgan businesses unless such assets are primarily related to the operation of the KM Pipeline Business; and
 - ii. Any part of the KM Pipeline Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- S. “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.
- T. “KM Pipeline Employee” 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.
- U. “KMPB License” means (i) a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property relating to operation of the KM Pipeline Business other than Intellectual Property already included in the KM Pipeline Assets; and (ii) such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable an Acquirer to use the rights.
- V. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity.
- W. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Kinder Morgan, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

- X. “Transitional Assistance” means any (i) administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to the provision of natural gas transportation, processing, storage, and pipeline operating services.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the KM Pipeline Assets at no minimum price, absolutely and in good faith, as an on-going business, no later than 180 days from the Acquisition Date, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- B. No later than the Divestiture Date, Respondent shall:
1. Grant to the Acquirer a KMPB License for any use in any business, and shall take all actions necessary to facilitate the unrestricted use of the license; and
 2. Secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of such business or assets to the Acquirer.
- C. In the event Respondent is unable to obtain any consents, licenses, certificates, registrations, permits, or other authorizations granted by:
1. Any governmental entity that are necessary to operate the KM Pipeline Assets, Respondent shall provide such assistance as Acquirer may reasonably request in Acquirer’s efforts to obtain a comparable authorization; and
 2. Any other Person that are necessary to divest the KM Pipeline Assets, Respondent shall, with the acceptance of Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.
- D. At the request of the Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent shall, for a period not to exceed nine (9) months from the date Respondent divests the KM Pipeline Assets, provide Transitional Assistance to the Acquirer:
1. Sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner that Respondent conducted the divested assets and business prior to the divestiture; and

2. At substantially the same level and quality as such services are provided by Respondent in connection with its operation of the divested assets and business prior to the divestiture.

Provided, however, that Respondent shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Transitional Assistance because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which an Acquirer would be entitled to receive in the event of Respondent's breach of any agreement to provide Transitional Assistance.

Provided further, that, if Respondent provides Transitional Assistance pursuant to this Paragraph II.D., Respondent shall have no role in negotiating or setting rates, terms, or conditions of service, making expansion or interconnection decisions, or marketing any services relating to the transportation of natural gas (or related products) through each of the Interstate Pipeline Systems; *provided, however,* that Respondent, in providing Transitional Assistance may assist in submitting any necessary regulatory filings and facilitating expansions or interconnections.

- E. From the date Respondent executes the Consent Agreement, Respondent shall provide a proposed Acquirer with the opportunity to recruit and employ any KM Pipeline Employee in conformance with the following:

1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondent shall provide a proposed Acquirer with the following information for each KM Pipeline Employee, as and to the extent permitted by law:
 - (a) name, job title or position, date of hire and effective service date;
 - (b) a specific description of the employee's responsibilities;
 - (c) the base salary or current wages;
 - (d) the most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year and current target or guaranteed bonus, if any;
 - (e) employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 - (f) any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - (g) at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant KM Pipeline Employee(s).

2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with proposed Ays after a re

an offer has been made and the employee has declined the offer, or where the individual's employment has b

- B. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the KM Pipeline Assets or the KM Pipeline Business is permitted to Respondent's employees under Paragraph III.A.

Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided*,

however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee

agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and the Hold Separate Order, including a description of all substantive contacts or negotia

- 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.

IX.

IT IS FURTHER ORDERED that this Order shall terminate when all of the obligations of the Divestiture Agreement required in Paragraph II. or Paragraph IV. of this Order have been accomplished.

By the Commission, Commissioner Ramirez recused.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 12, 2012

Confidential Appendix A

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

Confidential Appendix B

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