

Complaint

IN THE MATTER OF

KINDER MORGAN, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4355; File No. 121 0014
Complaint, May 1, 2012 – Decision, June 12, 2012

This consent order addresses the \$38 billion acquisition by Kinder Morgan, Inc. of certain assets of El Paso Corporation. The complaint alleges that the acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for pipeline transportation services. The consent order requires Respondent to divest its own Rockies Express (REX), Kinder Morgan Interstate Gas Transmission, and Trailblazer pipelines, as well as associated processing and storage capacity.

Participants

For the *Commission: Nathan Chubb, Keitha Clopper, Philip Eisenstat, and Terry Thomas.*

For the *Respondent: Vadim Brusser, Steve Newborn, Megan Peloquin, and Laura Wilkinson, Weil, Gotshal & Manges LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Respondent Kinder Morgan, Inc., and El Paso Corporation have entered into an acquisition agreement which, if consummated, would violate 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 it appearing to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

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I. RESPONDENT AND JURISDICTION

1. Kinder Morgan, Inc. is a publically traded corporation principally engaged in midstream petroleum and natural gas services. Kinder Morgan, Inc. is organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 500 Dallas Street, Suite 1000, Houston, Texas 77002.

2. Kinder Morgan, Inc. is the general partner of the master-limited partnership Kinder Morgan Energy Partners.

3. Kinder Morgan Energy Partners owns or has interests in over 38,000 miles of pipelines in North America for the transportation of natural gas, refined petroleum products, crude oil, and carbon dioxide.

4. Kinder Morgan, Inc. and its relevant operating entities are, and at all relevant times have been, engaged in the business of transporting natural gas by pipeline in Colorado and Wyoming.

5. Kinder Morgan, Inc. and its relevant operating entities are, and at all relevant times have been, engaged in the business of providing natural gas storage services to customers located in Colorado.

6. Kinder Morgan, Inc. and its relevant operating entities are, and at all relevant times have been, engaged in the business of processing natural gas produced in Wyoming.

7. Kinder Morgan, Inc. and its relevant operating entities are, and at all relevant times have been, engaged in activities in or affecting “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

8. El Paso Corporation is a publically traded corporation principally engaged in natural gas transportation, natural gas gathering and processing, and natural gas exploration and production. El Paso Corporation and its affiliates own or have

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interests in over 43,000 miles of natural gas pipelines and gathering systems. El Paso Corporation is organized, existing, and doing business under and by virtue of the laws of Delaware with its headquarters and principal place of business at 1001 Louisiana Street, Houston, Texas 77002.

9. Pursuant to an agreement dated October 16, 2011, Kinder Morgan, Inc. intends to acquire the outstanding stock of El Paso Corporation for a combination of cash and Kinder Morgan, Inc. stock and warrants collectively valued at \$21.1 billion. Kinder Morgan, Inc. will also assume \$17 billion of debt from El Paso Corporation.

III. THE RELEVANT MARKETS**A. PIPELINE TRANSPORTATION OF NATURAL GAS
TO UTILITIES AND OTHER CUSTOMERS IN THE
COLORADO FRONT RANGE**

10. The transportation of natural gas by pipeline is a relevant product market in which to analyze the proposed acquisition.

11. The Front Range region in eastern Colorado, which runs from the Cheyenne Hub in Weld County, Colorado in the north to Pueblo, Colorado in the south, is a relevant geographic market for the delivery of natural gas to utilities and other customers.

12. A relevant market in which to analyze the proposed acquisition is pipeline transportation of natural gas delivered to utilities and other customers in the Colorado Front Range region.

**B. PIPELINE TRANSPORTATION OF NATURAL GAS
FROM WELLS IN THE
DENVER/JULESBURG/NIORARA PRODUCTION BASIN**

13. The transportation of natural gas by pipeline is a relevant product market in which to analyze the proposed acquisition.

14. The Denver/Julesburg/Niobrara production basin, covering parts of northwestern Colorado, western Nebraska, and southeastern Wyoming, is a relevant geographic market for the shipment of natural gas.

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15. A relevant market in which to analyze the proposed acquisition is pipeline transportation of natural gas shipped from wells in the Denver/Julesburg/Niobrara production basin.

**C. PIPELINE TRANSPORTATION OF NATURAL GAS
FROM WELLS IN THE POWDER RIVER PRODUCTION
BASIN**

16. The transportation of natural gas by pipeline is a relevant product market in which to analyze the proposed acquisition.

17. The Powder River production basin, covering parts of northeast Wyoming, is a relevant geographic market for the shipment of natural gas.

18. A relevant market in which to analyze the proposed acquisition is pipeline transportation of natural gas shipped from wells in the Powder River production basin.

**D. PIPELINE TRANSPORTATION OF NATURAL GAS
FROM WELLS IN THE WIND RIVER PRODUCTION
BASIN**

19. The transportation of natural gas by pipeline is a relevant product market in which to analyze the proposed acquisition.

20. The Wind River production basin, covering parts of central Wyoming, is a relevant geographic market for the shipment of natural gas.

21. A relevant market in which to analyze the proposed acquisition is pipeline transportation of natural gas from wells in the Wind River production basin.

**E. PIPELINE TRANSPORTATION OF NATURAL GAS
FROM WELLS IN THE WESTERN WYOMING
PRODUCTION BASINS**

22. The transportation of natural gas by pipeline is a relevant product market in which to analyze the proposed acquisition.

23. The Western Wyoming production basins, the Green River, Red Desert and Washakie production basins, each covering

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portions of southwestern Wyoming, taken together are a relevant geographic market for the shipment of natural gas.

24. A relevant market in which to analyze the proposed acquisition is pipeline transportation of natural gas from wells in the Western Wyoming production basins.

**F. PIPELINE TRANSPORTATION OF NATURAL GAS
FROM WELLS IN THE PICEANCE PRODUCTION BASIN**

25. The transportation of natural gas by pipeline is a relevant product market in which to analyze the proposed acquisition.

26. The Piceance production basin, covering parts of northwestern Colorado, is a relevant geographic market for the shipment of natural gas.

27. A relevant market in which to analyze the proposed acquisition is pipeline transportation of natural gas from wells in the Piceance production basin.

**G. NO NOTICE NATURAL GAS DELIVERY SERVICE
TO THE FRONT RANGE REGION IN EASTERN
COLORADO**

28. Shippers on interstate natural gas pipelines must give advance notice to the pipeline operator when the shipper plans to inject natural gas into the pipeline. Some pipelines offer a premium service at extra cost, allowing shippers to ship natural gas without the normal notice period. Such service is called “no-notice” service.

29. No notice natural gas delivery service is a relevant product market.

30. The Front Range region in eastern Colorado, which runs from the Cheyenne Hub in Weld County, Colorado in the north to Pueblo, Colorado in the south, is a relevant geographic market for the receipt of natural gas.

31. A relevant market in which to analyze the proposed acquisition is the provision of no notice natural gas delivery

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service to utility companies and local distribution companies in the Colorado Front Range region.

H. NATURAL GAS PROCESSING IN THE WIND RIVER BASIN

32. Natural gas processing is a relevant product market.

33. The Wind River Basin is a relevant geographic market.

34. A relevant market in which to analyze the proposed acquisition is the processing of natural gas produced in the Wind River production basin in Wyoming.

VI. ANTICOMPETITIVE EFFECTS

35. The acquisition may substantially lessen competition in the relevant markets by, among other things: (a) eliminating actual, direct, and substantial competition between Kinder Morgan, Inc. and El Paso Corporation; and (b) increasing the likelihood that Kinder Morgan, Inc. will exercise market power unilaterally.

VII. ENTRY CONDITIONS

36. Post-acquisition, entry or expansion into the relevant markets would not be timely, likely, and sufficient in scope to deter or negate the anticompetitive effects of the proposed acquisition.

VI. VIOLATIONS CHARGED

37. The agreement described in Paragraph 9 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

38. The acquisition described in Paragraph 9, if consummated, would constitute a violation 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.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of May, 2012, issues its Complaint against Respondent.

By the Commission, Commissioner Ramirez recused.

**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

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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

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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

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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

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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

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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).

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- 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.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint Robert E. Ogle as Hold Separate Trustee to monitor and supervise the management of the Hold Separate Business and ensure that Respondent complies with its obligations under this Hold Separate Order and the Decision and Order.
- B. Respondent shall enter into an agreement with the Hold Separate Trustee that shall become effective no later than one (1) day after the Acquisition Date that, subject to the prior approval of the Commission, transfers to and confers upon the Hold Separate Trustee all rights, powers, and authority necessary to permit the Hold Separate Trustee to perform his duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order and in consultation with Commission staff, and shall require that the Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission:
1. The Hold Separate Trustee shall have the responsibility for monitoring the organization of the Hold Separate Business and maintenance of the independence of the Hold Separate Business; supervising the management of the Hold Separate

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Business; and monitoring Respondent's compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.

2. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept by 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*, that such agreement shall not restrict the Hold Separate Trustee from providing any information to the Commission.

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6. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms and conditions commensurate with the Hold Separate Trustee's experience and responsibilities.
 7. Respondent shall indemnify the Hold Separate Trustee 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 losses, claims, damages, liabilities, or expenses result from the Hold Separate Trustee's gross negligence or willful misconduct.
 8. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until this Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondent's compliance with its obligations under the Hold Separate Order and the Decision and Order. - Included within each report shall be the Hold Separate Trustee's assessment of the extent to which the Hold Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections, or any other regularly prepared financial statements.
- C. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold 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

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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 responsibilities on the same terms and conditions as provided in Paragraph III. of this Hold Separate Order.
- D. The Hold Separate Trustee shall serve until the day after the Divestiture Date; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Hold Separate Order and the Decision and Order.

IV.**IT IS FURTHER ORDERED** that:

- A. No later than three (3) days after the Acquisition Date, Respondent shall appoint Rockford G. Meyer as the Hold Separate Manager to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice.
- B. Respondent shall enter into a management agreement with the Hold Separate Manager that shall become effective no later than three (3) days after the Acquisition Date and that, subject to the approval of the Hold Separate Trustee, in consultation with the

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Commission staff, transfers all rights, powers, and authority necessary to permit the Hold Separate Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order:

1. The Hold Separate Manager shall be responsible for managing the operation of the Hold Separate Business and shall report directly and exclusively to the Hold Separate Trustee, and shall manage the Hold Separate Business independently of the management of Respondent and its other businesses.
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.

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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 liabilities, losses, damages, claims, or expenses result from the Hold Separate Manager's gross negligence or willful misconduct.
 7. Respondent shall assure that Commission staff shall have access to and be permitted to communicate with, contact, and be contacted by the Hold Separate Manager without prior notice to Respondent or the presence of Respondent's employees or counsel, except as expressly required by law.
- C. The Hold Separate Manager shall have the authority, in consultation with the Hold Separate Trustee, to:
1. Staff the Hold Separate Business with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business, including:
 - a. Replacing any departing or departed Hold Separate Employee with a person who has similar experience and expertise or determine not to replace such departing or departed employee.
 - b. Removing any Hold Separate Employee who ceases to act or fails to act diligently and

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consistent with the purposes of this 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 in the operations of Respondent's other businesses, and (ii) receive or have access to, or use or continue to use, any Confidential Business Information pertaining to Respondent's other businesses.
 - d. Providing each Hold Separate Employee with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the KM Pipeline Assets.
2. Facilitate the transfer of any Hold Separate Employee to the Acquirer in connection with the divestiture of the KM Pipeline Assets, including allowing an Acquirer access to (i) each Hold Separate Employee to interview and (ii) Employment Information relating to each Hold Separate Employee, in the course of due diligence performed in connection with Respondent's efforts to divest the KM Pipeline Assets pursuant to the Decision and Order.
- D. The Hold Separate Manager may be removed for cause by the Hold Separate Trustee in consultation with the Commission staff. If the Hold Separate Manager is removed, resigns, or otherwise ceases to act as Hold Separate Manager, Respondent shall, within three (3) days after such termination, (i) appoint a substitute Hold Separate Manager and (ii) enter into an agreement with the substitute Hold Separate Manager, subject to the approval of the Hold Separate Trustee and in consultation with Commission staff, on the same terms and conditions as provided in Paragraph IV. of this Hold Separate Order.

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V.**IT IS FURTHER ORDERED** that:

- A. Respondent shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Trustee, (ii) the Hold Separate Manager, (iii) any Hold Separate Employee, or (iv) any Support Services Employee to perform their duties and responsibilities pursuant to this Hold Separate Order.
- B. Respondent shall continue to provide, or offer to provide, Support Services and goods to the Hold Separate Business as are being provided to such business by Respondent as of the date the Consent Agreement is signed by Respondent:
 - 1. For Support Services and goods that Respondent provided to the Hold Separate Business as of the date the Consent Agreement is signed by Respondent, Respondent may charge no more than the same price, if any, charged by Respondent for such Support Services and goods as of the date the Consent Agreement is signed by Respondent.
 - 2. For any other Support Services and goods that Respondent may provide to the Hold Separate Business, Respondent may charge no more than Respondent's Direct Cost for the same or similar Support Services and goods.
 - 3. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Hold Separate Manager and in consultation with the Hold Separate Trustee, the ability to acquire Support Services and goods from third parties unaffiliated with Respondent.
- C. Respondent shall not permit:
 - 1. Any of its employees, officers, agents, or directors, other than (i) the Hold Separate Manager, (ii) any

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Hold Separate Employee, and (iii) any Support Services Employee, to be involved in the operations of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.

2. The Hold Separate Manager or any Hold Separate Employee to be involved, in any way, in the operations of Respondent's businesses other than the Hold Separate Business.
 3. Any Support Services Employee to be involved in the operations of the El Paso Rockies Pipeline Business.
- D. Respondent shall (i) not offer any incentive to any Hold Separate Employee to decline employment with the Acquirer, (ii) remove any impediments that may deter or prevent any Hold Separate Employee from accepting employment with the Acquirer or that would affect the ability of such employee to be employed by the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment of any Hold Separate Employee by the Acquirer.
- E. Respondent shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Trustee to:
1. Operate the Hold Separate Business at least as it is currently staffed and operated (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Acquisition Date.
 2. Perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate

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Business in the ordinary course of business and in accordance with past practice and current plans.

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. No later than ten (10) days after the date the Acquisition Date, Respondent shall circulate to each Hold Separate Employee and to persons who are employed in Respondent's businesses that compete with the Hold Separate Business, a notice of this Hold Separate Order and the Consent Agreement, in a form approved by the Hold Separate Trustee and in consultation with Commission staff.

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VI.

IT IS FURTHER ORDERED that:

- A. Respondent's employees shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Hold Separate Business except in the course of:
1. Performing their obligations or as permitted under this Hold Separate Order or the Decision and Order.
 2. Performing their obligations under any Divestiture Agreement.
 3. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the KM Pipeline Assets and KM Pipeline Business, or as required by law.

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

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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

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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.

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By the Commission, Commissioner Ramirez recused.

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]**

**DECISION AND ORDER
[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.

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§ 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 thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets (“Hold Separate Order”) and having accepted the executed Consent Agreement and placed such Consent Agreement 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 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.

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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,

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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

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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,

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customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (v) and all rights in internet web sites and internet domain names presently used by Kinder Morgan.

- O. “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.
- P. “IP License-Back” means (i) a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property included in the KM Pipeline Assets relating to Respondent’s operation of a business that Respondent is not required to divest under this Order; 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 Respondent to use the rights.
- Q. “KM Key Employee” means any KM Pipeline Employee identified by agreement between

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Respondent and an Acquirer and made a part of a Divestiture Agreement.

- R. “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, including but not limited to:
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

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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.

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

- a. 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
 - b. 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.

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- 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:

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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.

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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

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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 (i) an opportunity to meet, personally and outside the presence or hearing of any employee or agent of the Respondent, with any KM Pipeline Employee, (ii) an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws, and (iii) to make offers of employment to any KM Pipeline Employee.
 3. Respondent shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any KM Pipeline Employee, (ii) not offer any incentive to any KM Pipeline Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any KM Pipeline Employee who receives a written offer of employment from a proposed Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent to terminate the employment of any employee or prevent Respondent from continuing the employment of any employee; and (iv) remove any impediments within the control of Respondent that may deter any KM Pipeline Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability of such employee to be employed by a proposed Acquirer.

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4. Respondent shall provide each KM Key Employee to whom the Acquirer has made a written offer of employment with a financial incentive to accept a position with the Acquirer at the time of divestiture of the KM Pipeline Assets, pursuant to the terms set forth in Confidential Appendix A attached to this Order.
- F. For a period of two (2) years after the Divestiture Date, Respondent shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any KM Pipeline Employee who has accepted an offer of employment with an Acquirer, or who is employed by an Acquirer, to terminate his or her employment relationship with an Acquirer; *provided, however*, the Respondent may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any KM Pipeline Employees; and
 2. Hire KM Pipeline Employees who apply for employment with Respondent, so long as such individuals were not solicited by the Respondent in violation of this paragraph; *provided further*, that this sub-Paragraph shall not prohibit the Respondent from making offers of employment to or employing any KM Pipeline Employees if an Acquirer has notified the Respondent in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.
- G. In the event that the employee listed in Confidential Appendix B attached to this Order ("Excluded Employee") continues his employment with Respondent after the Acquisition Date, then Respondent is prohibited from assigning the Excluded

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Employee any work relating to, and shall assure that he is not involved with the operation or management of, the El Paso Rockies Pipeline Business until after the Divestiture Date; *provided, however*, that nothing herein shall prohibit a proposed Acquirer from making an offer of employment to or employing the Excluded Employee pursuant to the provisions of Paragraph II.E. of this Order; *provided further*, that the prohibitions in this Paragraph may terminate prior to the Divestiture Date if a proposed Acquirer has notified the Respondent in writing that the proposed Acquirer does not intend to make an offer of employment to the Excluded Employee and that the proposed Acquirer has no objection to the Excluded Employee engaging in work relating to the operation or management of the El Paso Rockies Pipeline Business prior to the Divestiture Date.

- H. The purpose of the divestiture of the KM Pipeline Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondent and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.**IT IS FURTHER ORDERED** that:

- A. Respondent's employees shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the KM Pipeline Assets or the KM Pipeline Business except in the course of:
1. Performing their obligations as permitted under this Order or the Hold Separate Order;
 2. Performing their obligations under any Divestiture Agreement; or

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3. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the KM Pipeline Assets and KM Pipeline Business, or as required by law.

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

- 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
- C. Respondent's employees under Paragraph III.A. of this Order, Respondent shall limit such information (i) only to those Persons who require such information for the purposes permitted under Paragraph III.A., (ii) only to the extent such Confidential Business Information is required, and (iii) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information.
- D. Respondent shall enforce the terms of this Paragraph III. as to any Person other than the Acquirer of the KM Pipeline Assets and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III., including training of Respondent's employees and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested all of the KM Pipeline Assets and otherwise fully complied with the obligations as required by Paragraph II.A. of this

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Order, the Commission may appoint a Divestiture Trustee to divest the KM Pipeline Assets and/or perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.

- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, 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,

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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

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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 shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses

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incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's 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 losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph IV.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants,

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accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such 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.**IT IS FURTHER ORDERED** that:

- A. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of the Respondent under such agreement.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondent shall comply with all provisions of the Divestiture Agreement, and any breach by Respondent of any term of such agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Any failure by the Respondent to comply with any

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term of such Divestiture Agreement shall constitute a failure to comply with this Order.

- D. Respondent shall not modify or amend any of the terms of the Divestiture Agreement without the prior approval of the Commission.

VI.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraph II of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order and the Hold Separate Order. Respondent shall include in its 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 negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondent shall include in its compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that any divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.
- B. One (1) year after the date this Order becomes final and annually thereafter until this Order terminates, and at such other times as the Commission may request, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and

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form in which it has complied and is complying with this Order and any Divestiture Agreement.

VII.

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.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, with respect to any matter contained in this Order, Respondent shall 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 Order and the 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;
- 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.

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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.

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]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (the “Commission”), subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (Consent Agreement) with

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Kinder Morgan, Inc. (“KMI” or “Respondent”) and El Paso Corporation (“El Paso”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that otherwise would likely result from Respondent’s acquisition of El Paso. Under the terms of the agreement, Respondent will divest its own Rockies Express (REX), Kinder Morgan Interstate Gas Transmission, and Trailblazer pipelines, as well as associated processing and storage capacity.

On October 16, 2011, KMI announced that it had entered into a definitive agreement whereby KMI will acquire all of the outstanding shares of El Paso for approximately \$38 billion, including the assumption of \$17 billion in debt (the “Acquisition”). The Acquisition would combine the nation’s largest two natural gas pipeline owners. Separately from any Commission action, El Paso will sell its exploration and production (“E&P”) assets to another company, delivering its midstream components and the proceeds from the E&P sale to KMI.

Without some form of relief, the Acquisition is likely to result in anticompetitive effects in areas in the Rocky Mountains where the combination of the KMI pipelines and the El Paso pipelines threatens to lessen competition substantially in pipeline transportation. The Acquisition is also likely to result in anticompetitive effects in other markets related to pipelines: gas processing and “no-notice” service. The proposed Consent Agreement effectively remedies these possible anticompetitive effects by requiring KMI to divest three of its natural gas pipelines and two natural gas processing plants.

II. The Parties

A. Kinder Morgan, Inc.

KMI is a publicly traded corporation principally engaged in midstream petroleum and natural gas services. KMI is the general partner in the master-limited partnership (“MLP”) Kinder Morgan Energy Partners (KMEP) (collectively, “Kinder Morgan”). KMEP owns over 38,000 miles of pipelines and 180 terminals in North America for the transportation and storage of natural gas, refined petroleum products, crude oil, and carbon dioxide.

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B. El Paso Corporation

El Paso is a publically traded corporation principally engaged in natural gas transportation, natural gas gathering and processing, and E&P. El Paso is the general partner in the MLP, El Paso Pipeline Partners (EPPP), into which El Paso placed some of its pipelines. Between El Paso and EPPP, El Paso owns or has interests in over 43,000 miles of natural gas pipelines and gathering systems.

III. Market Structure and Competitive Effects in Pipeline Transportation

Natural gas pipelines provide the critical connection between natural gas wells, which produce natural gas, and consumers who use natural gas to generate heat and power. Pipeline transportation is the only economical means to transport natural gas between the producers and consumers. Pipelines that cross state lines are regulated by the Federal Energy Regulatory Commission (“FERC”). FERC regulates maximum-allowable interstate natural gas pipeline transportation fees, but does not eliminate competition between pipelines. So long as the pipelines comply with their tariffs, they are otherwise free to compete by offering prices below their maximum tariff rate, as well as competing on other terms of service.

The competitive overlaps between Kinder Morgan and El Paso in pipeline transportation are in the Rocky Mountain gas production areas in and around Wyoming, Colorado, and Utah. Kinder Morgan and El Paso pipelines dominate the transportation options for five production areas in the Rockies: (1) the Denver/Julesburg/Niobrara Production Basin; (2) the Powder River Production Basin; (3) the Wind River Production Basin; (4) the Western Wyoming Production areas including the Green River Production Basin, the Red Desert Production Basin, and the Washakie Production Basins; and (5) the Piceance Production Basin. Each of these production areas is a relevant geographic market for the transportation of natural gas.

Production areas are connected to more than one pipeline and some pipelines connect to more than one production area. Some pipelines do not connect directly to the basins but interconnect

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with the pipelines leaving the basins and are necessary to get natural gas from the basins to consuming markets. There are four Kinder Morgan pipelines that serve the basins and interconnections in the Rockies and four El Paso pipelines that serve those same basins and interconnections.

In each of these relevant geographic markets, the pipeline transportation of natural gas is highly concentrated. The Acquisition would significantly increase concentration and eliminate direct competition between the pipelines owned by the two companies, leading to higher prices for pipeline transportation of natural gas to the detriment of producers and consumers of natural gas.

One consumption area in the Rockies is also a relevant geographic market. The Colorado Front Range, which runs from Fort Collins, Colorado in the north to Pueblo, Colorado in the south, contains the major population centers in the Rockies. It overlaps the Denver/

Julesburg/Niobrara Production Basin but requires substantial additional natural gas from the other production areas in the Rockies, particularly in the winter. The pipeline transportation of natural gas into this market from the other production areas is highly concentrated. The Acquisition would significantly increase concentration and eliminate direct and potential competition between the pipelines owned by the two companies, leading to higher prices for pipeline transportation of natural gas to the detriment of consumers of natural gas along the Colorado Front Range.

IV. Other Markets Impacted by the Proposed Acquisition

Two other markets, the processing of natural gas and the provision of no-notice pipeline transportation services, would also be impacted by the Acquisition. Both services are related to the pipeline transportation of natural gas.

Natural gas must meet certain standards before an interstate pipeline can accept it. In some areas, natural gas contains heavy hydrocarbons, commonly referred to as natural gas liquids or NGLs. Interstate pipelines have a limit on how much NGLs

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natural gas can contain and be transported on a pipeline. Gas that contains excessive amounts of NGLs must be treated at a gas processing plant to remove those liquids before it can be transported on interstate pipelines. Currently, the high value of NGLs, relative to the natural gas, would cause the gas to be processed regardless of the specifications of the pipelines. There is no substitute for gas processing to remove the NGLs. The relevant geographic market for processing gas is in the Wind River Production Basin and surrounding areas. For some wells in areas around that basin, only El Paso and Kinder Morgan have processing plants to treat gas before it goes onto interstate pipelines. The Acquisition would eliminate direct competition between the processing plants owned by the two companies, leading to higher prices for gas processing to the detriment of producers of natural gas.

No-notice service is also a relevant market. Interstate pipelines typically require advance notice before a customer transports gas on a pipeline. Some customers' demand for natural gas fluctuates so much that the customers cannot give the required notice to the pipeline and still obtain the natural gas that they need. No-notice service is the term that refers to gas transportation where the customer is not obligated to provide advance notice before shipping gas. Utility customers whose natural gas demand can shift suddenly due to changes in the weather often require no-notice service. No-notice service is provided by pipelines at a premium price. It is not economical for each utility that has need for no-notice service to build sufficient storage to meet all of its peak needs through building its own storage facility. Many utilities are dependent on pipeline companies to provide no-notice service utilizing pipeline owned or third party storage. The relevant geographic market for no-notice service is the Colorado Front Range. Only those pipelines that currently serve this area can offer no-notice service. Currently only El Paso offers no-notice service in that area, but Kinder Morgan is a likely potential entrant into the market. The acquisition by Kinder Morgan of El Paso would eliminate potential competition for no-notice service to the detriment of utility customers.

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V. The Agreement Containing Consent Orders

Under the Agreement Containing Consent Orders (the “Consent Order”) Kinder Morgan has 180 days from the closing date of its acquisition of El Paso to completely divest three KMI pipelines and two processing plants in the Rockies. The fourth KMI pipeline, the TransColorado, does not raise competitive concerns because its competition with El Paso is limited and there are viable alternatives for transporting natural gas from the San Juan Basin. Accordingly, the TransColorado was not included in the divested assets. These divestitures maintain the competitive status quo ante in the Rockies. Pursuant to the Consent Order, Kinder Morgan may complete its acquisition of El Paso, while the divestiture of pipelines and processing plants already owned by Kinder Morgan will maintain the level of competition that already existed. The Order to Hold Separate and Maintain Assets (discussed in the next section) will protect the competitive status quo until Kinder Morgan successfully finds a buyer for the assets to be divested.

The Consent Order requires Kinder Morgan to provide transitional assistance and support services to the buyer of the divested services. Kinder Morgan must also license any key software and intellectual property to the buyer. The Consent Order allows the buyer to recruit Kinder Morgan employees who work on the divested assets. For a period of two years, Kinder Morgan may not solicit employees that accept employment offers from the buyer to rejoin Kinder Morgan. The Consent Order also limits Kinder Morgan’s access to, and use of, confidential business information pertaining to the divestiture assets.

If Kinder Morgan fails to fully divest the assets within the 180-day time period, the Order grants the Commission power to appoint a divestiture trustee to complete the divestiture. The Consent Order also governs the divestiture trustee’s duties, privileges, and powers.

The Consent Order requires Kinder Morgan, or the divestiture trustee, if appointed, to file periodic reports detailing efforts to divest the assets and the status of that undertaking. Commission representatives may gain reasonable access to Kinder Morgan’s business records related to compliance with the consent

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agreement. The Consent Order terminates when all requirements of the divestiture order outlined in Paragraphs II and IV of the Consent Order are satisfied.

VI. The Order To Hold Separate and Maintain Assets

The Order to Hold Separate and Maintain Assets (“Hold Separate Order”) requires KMI to separate out the divestiture assets from its remaining businesses and assets. Pursuant to the Hold Separate Order, Kinder Morgan will not exercise any control or influence over the divestiture assets while seeking a buyer. The Hold Separate Order seeks to preserve the divestiture assets as viable, competitive, ongoing businesses, and it assures that Kinder Morgan does not access the confidential business information belonging to those businesses.

The Hold Separate Order also empowers the Commission to appoint a hold separate trustee to monitor the divestiture assets and requires the Respondent to appoint a hold separate manager, subject to approval of the hold separate trustee in concurrence with Commission staff, to manage day-to-day operations. The Hold Separate Order outlines the rights, duties, and responsibilities of both the trustee and the manager, including access to business records, hiring necessary consultants and attorneys, and any other thing reasonably necessary to carry out their duties. The hold separate manager reports to the hold separate trustee and not to Kinder Morgan.

The Hold Separate Order prohibits Kinder Morgan from interfering with the hold separate trustee and requires it to indemnify the trustee. The Hold Separate Order requires Kinder Morgan to provide certain support services and financial assistance to the divestiture assets to ensure they operate as they did before the merger.

The hold separate trustee must submit periodic reports to the Commission concerning compliance with the Hold Separate Order. The Commission may appoint a different hold separate trustee if the original trustee fails to carry out his duties. The hold separate manager has authority to hire staff, maintain the assets, continue on-going capital projects, and ensure employees of the

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divestiture assets are not involved in Kinder Morgan's other businesses.

The Hold Separate Order terminates either (1) one day after the divestiture is completed or (2) three business days after the Commission withdraws acceptance of the consent agreement.

VII. Opportunity For Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter. Comments received during this comment period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order to aid the Commission in its determination of whether it should make final the proposed Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.

Complaint

IN THE MATTER OF

PERRIGO COMPANY
AND
PADDOCK LABORATORIES, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4329; File No. 111 0083
Complaint, July 22, 2011 – Decision, June 21, 2012

This consent order addresses the \$540 million acquisition by Perrigo Company of certain assets of Paddock Laboratories, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in the U.S. markets for the manufacture and sale of generic: (1) ammonium lactate cream; (2) ammonium lactate lotion; (3) ciclopirox shampoo; (4) promethazine suppository; (5) clobetasol spray; (6) diclofenac solution (collectively, the “Products”); and (7) testosterone gel. The consent order requires the companies to divest Paddock’s rights and assets necessary to manufacture and market generic: (1) ammonium lactate external cream 12 percent (“ammonium lactate cream”); (2) ammonium lactate topical lotion 12 percent (“ammonium lactate lotion”); (3) ciclopirox shampoo 1 percent (“ciclopirox shampoo”); and (4) promethazine hydrochloride rectal suppository 12.5 mg and 25 mg (“promethazine suppository”) to Watson Pharmaceuticals, Inc. The consent order also requires the companies to divest all of Perrigo’s rights and assets necessary to manufacture and market generic clobetasol propionate spray 0.05 percent (“clobetasol spray”) and diclofenac sodium topical solution 1.5 percent (“diclofenac solution”) to Watson.

Participants

For the *Commission*: Christine Palumbo, Susan Huber, and Aylin M. Skroejer.

For the *Respondents*: Scott A. Stempel, Morgan, Lewis & Bockius LLP; Garret G. Rasmussen, Orrick, Herrington & Sutcliffe LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade