

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE JOINT)
APPLICATION OF SOURCE GAS LLC,)
SOURCE GAS DISTRIBUTION LLC,)
KINDER MORGAN, INC., AND KM)
RETAIL UTILITY HOLDCO LLC, FOR)
APPROVAL OF A TRANSFER OF)
UTILITY ASSETS AND CERTIFICATE)
AUTHORITY FROM KINDER)
MORGAN, INC., TO SOURCE GAS)
DISTRIBUTION LLC., AS A WHOLLY)
OWNED SUBSIDIARY OF SOURCE)
GAS LLC)

Docket No. 30022-84-GA-06
(Record No. 10806)

PRE-FILED DIRECT TESTIMONY OF

Denise Kay Parrish

On Behalf of the Office of Consumer Advocate

Filed February 12, 2007
Hearing February 28, 2007

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Denise Kay Parrish and my business address is 2515 Warren Avenue,
3 Suite 304, Cheyenne, Wyoming 82002.

4
5 **Q. WHAT IS YOUR OCCUPATION?**

6 A. I am currently the Deputy Administrator of the Wyoming Office of Consumer
7 Advocate (OCA). In this position, I review and provide input into the
8 recommendations made by the OCA. I review utility applications filed with the
9 Wyoming Public Service Commission (Commission) and provide advice to the
10 Administrator regarding the involvement the OCA should have, if any, in the
11 various cases. I review applications, perform analyses and provide
12 recommendations to the Commission relative to various utility matters, including
13 revenue requirements, tariff language, competitive issues, rules and regulations,
14 and other items. I write and issue press releases, perform special studies, as well
15 as provide information and research to customers, the legislature, the OCA
16 Administrator, and others. I do other assignments and tasks, as needed and as
17 assigned by the OCA Administrator.

18
19 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL**
20 **BACKGROUND?**

21 A. In 1976, I graduated from Michigan State University with a Bachelor's degree in
22 Accounting. I have spent nearly thirty years as a regulator of public utilities,
23 having been on the staff of four state utility regulatory commissions and two
24 consumer advocate entities. More than fifteen of these years have been spent at
25 the Wyoming Public Service Commission.

26
27 I have taken classes related to various aspects of public utility regulation,
28 including income taxes, regulatory accounting, capital recovery, cost-of-service,
29 rate design, revenue requirements, separations and allocations, and other
30 specialized topics. I have taught classes on issues of accounting standards,

1 general ratemaking principles, affiliate transactions, regulatory accounting,
2 financial reporting, and other specialized topics to regulatory professionals.

3
4 Since 2002, I have been an instructor at the Michigan State University Institute of
5 Public Utilities (CAMP NARUC). I have also worked with the Nigerian
6 Communications Commission on regulatory accounting and reporting matters and
7 have done work for the International Telecommunications Union as a seminar
8 leader. Furthermore, I have participated as a presenter at several meetings of the
9 Tariff and Pricing Committee of the Energy Regulators Regional Association
10 (ERRA).

11
12 I am the past chair and a current member of the National Association of
13 Regulatory Utility Commissioners' Staff Subcommittee on Accounting and
14 Finance. I am a member of the NARUC Staff Subcommittee on International
15 Relations. I am listed in the current edition of Who's Who of American Women.
16 I am currently a member of the National Association of State Utility Consumer
17 Advocate's (NASUCA) Tax and Accounting Committee. Finally, I am a member
18 of the staff of the Federal-State Joint Board on Universal Service.

19
20 **Q. DO YOU HAVE EXPERIENCE AS AN EXPERT WITNESS?**

21 A. Yes. I have testified more than one hundred twenty-five times as an expert
22 witness. I have testified before the Michigan Public Service Commission, the
23 Colorado Public Utilities Commission, the Colorado District Court, the Arizona
24 Corporations Commission, the Wyoming Public Service Commission, and the
25 Wyoming Legislature Joint Corporations Committee. I have provided testimony
26 before an en banc hearing of the Federal State Joint Board on Universal Service
27 about potential changes to the federal high cost fund. I also recently testified
28 before the Federal Energy Regulatory Commission at a technical conference
29 about cash management and affiliated transaction issues. I have testified in
30 telecommunications, water, wastewater, electric, and natural gas cases. The
31 subjects upon which I have testified include revenue requirements, rate design,

1 cost-of-capital, nuclear decommissioning, accounting deferrals, adjustment
2 mechanisms, income taxes, capital recovery, universal service funding, and other
3 specialized topics.
4

5 **Q. WHO DO YOU REPRESENT IN THIS PROCEEDING?**

6 A. As a member of the Office of Consumer Advocate, I represent the interests of
7 Wyoming citizens and all classes of utility customers in this public utility matter,
8 as required by W.S. § 37-2-401. It is neither my intent nor my charge to represent
9 the position of any individual, group, municipality, or corporation.
10

11 **Q. WHAT COURSE OF ACTION IS AVAILABLE TO INDIVIDUAL**
12 **CONSUMERS OR OTHER INTERESTED PARTIES IF THEY WISH TO**
13 **PURSUE ISSUES NOT ADDRESSED BY THE OFFICE OF CONSUMER**
14 **ADVOCATE, OR TAKE A DIFFERENT POSITION FROM THE OFFICE**
15 **OF CONSUMER ADVOCATE?**

16 A. Consumers and other parties may intervene in the proceedings and raise
17 additional issues not addressed by the Office of Consumer Advocate, and may
18 take different positions than those presented by the OCA. Consumers may also
19 present written or oral comments at the hearing, which then become part of the
20 record in the case and are available to the Commission as it makes its decision on
21 any particular proposal or suggested change. The OCA encourages the
22 participation of the public and all interested parties in cases before the
23 Commission.
24

25 **Q. ARE YOU SPONSORING ANY EXHIBITS OR SCHEDULES IN THIS**
26 **PROCEEDING?**

27 A. Yes, I am. OCA Exhibit DKP-1 is a copy of a NARUC white paper on ring
28 fencing that will be cited later in my testimony. Additionally, throughout much of
29 the remainder of my testimony, I will refer to provisions and language found in
30 the Stipulation and Agreement filed by the Joint Applicants and the OCA on
31 February 9, 2007. Since this was provided earlier, I have chosen not to burden the

1 record by providing it again. However, it will be a useful document to access as I
2 describe its terms and conditions.

3

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony is to describe the initial and on-going concerns of
6 the OCA regarding the proposal to transfer Kinder Morgan's retail utility assets
7 and certificate authority to Source Gas Distribution LLC, as well as concerns
8 related to the change of overall ownership of this Wyoming distribution utility.
9 Furthermore, my testimony explains how the Stipulation and Agreement that the
10 OCA has entered into with the Joint Applicants mitigates or eliminates those
11 concerns, and why the OCA believes that approval of the Stipulation and
12 Agreement is in the public interest.

13

14 **Q. BEFORE PROVIDING A DETAILED PRESENTATION OF YOUR**
15 **CONCERNS AND RESOLUTION OF THOSE CONCERNS, PLEASE**
16 **PROVIDE AN OVERVIEW OF THE APPLICATION IN THIS**
17 **PROCEEDING.**

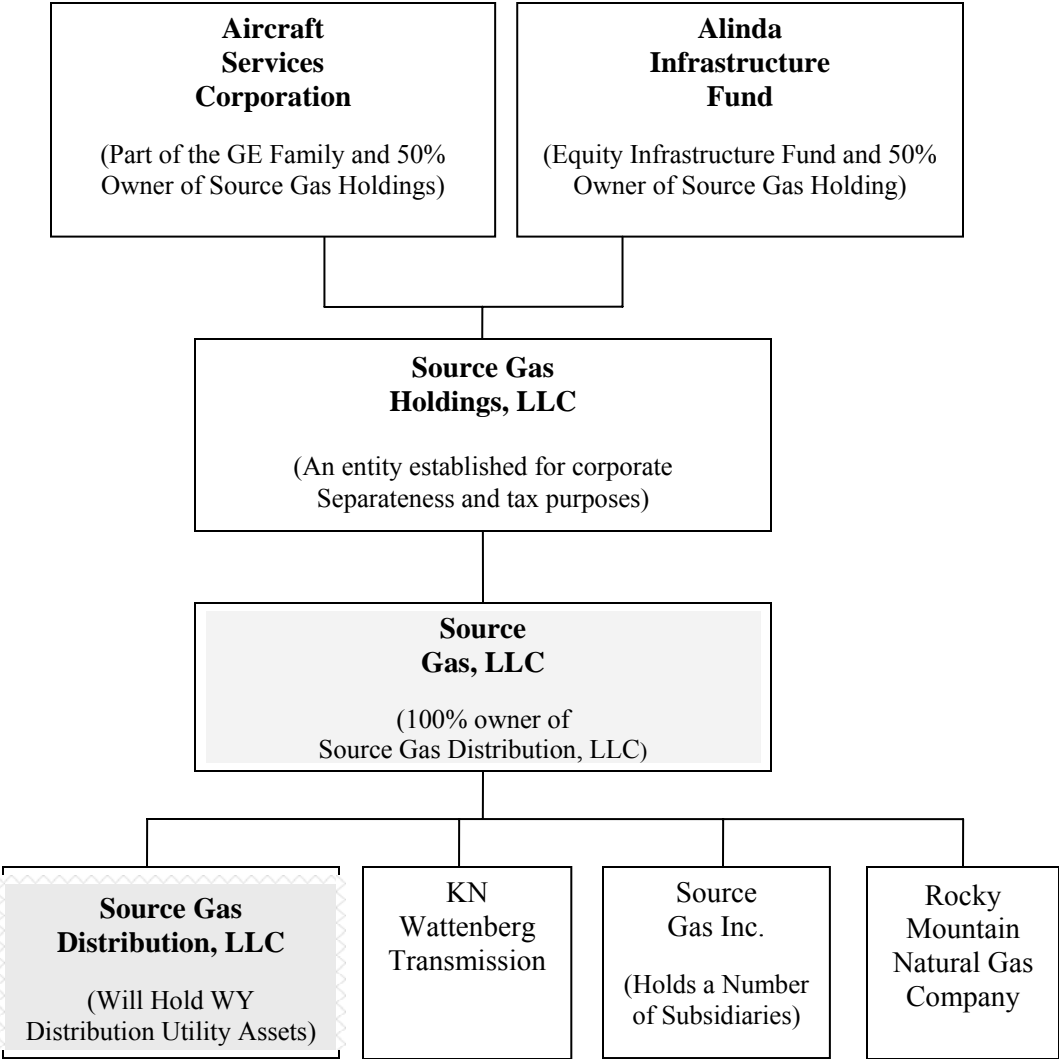
18 A. The Joint Applicants in this case are: Source Gas LLC (Source Gas), Source Gas
19 Distribution LLC (Source Gas Distribution), Kinder Morgan, Inc. (Kinder
20 Morgan) and KM Retail Utility Holdco, LLC (KMRUH). On September 29,
21 2006, the Joint Applicants filed an application seeking approval to transfer the
22 current Kinder Morgan retail distribution operation's utility assets and certificate
23 of convenience and necessity to Source Gas Distribution LLC. The request to
24 transfer the assets and the certificate is part of a general corporate reorganization
25 and change of ownership.

26

27 Kinder Morgan's Wyoming distribution operations are currently run as a division
28 of Kinder Morgan, Inc. In other words, Kinder Morgan is not run as a separate
29 subsidiary or separate legal entity, but instead is a division of the corporate parent.
30 Kinder Morgan, Inc. is the top box on the organizational chart and Kinder Morgan
31 Retail is housed as a division within that top box. Also included in that top box

1 are many other operations, such as the gas pipeline group, corporate development,
2 human resources, legal services, etc. KMI also holds numerous separate
3 subsidiaries.

4
5 Under the proposed organizational structure, Kinder Morgan’s current retail
6 (distribution) operations would be its own entity within the General Electric
7 family of companies. The name of the entity serving Wyoming distribution
8 customers would change to Source Gas Distribution LLC. The chart below
9 generally reflects the relevant part of the new organization with which Source Gas
10 Distribution would be associated.



1 **Q. ARE THERE WYOMING STATUTES THAT GOVERN THE**
2 **COMMISSION'S REVIEW OF THE PROPOSED TRANSACTION?**

3 A. Yes. W.S. § 37-1-104 specifically addresses the Commission's review of utility
4 reorganizations:

5 (a) No reorganization of a public utility shall take place
6 without prior approval by the public service commission. The
7 commission shall not approve any proposed reorganization if the
8 commission finds, after public notice and opportunity for public
9 hearing, that the reorganization will adversely affect the utility's
10 ability to serve the public.

11
12 (b) For purposes of this section, "reorganization" means any
13 transaction which, regardless of the means by which it is
14 accomplished, results in a change in the ownership of a majority of
15 the voting capital stock of a public utility, or the ownership or
16 control of any entity which owns or controls a majority of the
17 voting capital stock of a public utility. "Reorganization" as used in
18 this section shall not include a mortgage or pledge transaction
19 entered into to secure a bona fide borrowing by the party granting
20 the mortgage or making the pledge.

21
22 This statute directly relates to the reorganization portion of the application and
23 indicates that the standard is whether *the reorganization will adversely affect the*
24 *utility's ability to serve the public*. In the numerous mergers that have been
25 before the Commission in the last decade, the Commission has examined
26 concerns about the ability to serve on a broad, rather than narrow, basis.

27
28 For example, in the Cheyenne Light, Fuel and Power Dockets 20003-EA-04-75
29 and 30005-EA-04-97 (the cases in which Black Hills Corporation became the
30 owner of Cheyenne Light), the Commission found, at paragraph 63:

31 Our general legal standard in this case is that we must uphold the
32 public interest, and desires of the utility are secondary to the public
33 interest. *Mountain Fuel Supply Company v. Public Service*
34 *Commission*, 662 P.2d 878 (Wyo. 1983).
35

36 In this proceeding, the OCA has taken a broad view of what may constitute an
37 *adverse ability to serve the public*, and of what constitutes *the public interest*.

1 **Q. ARE THERE ANY OTHER STATUTES THAT MIGHT BE IMPORTANT**
2 **TO CONSIDER WHEN EXAMINING THIS MATTER?**

3 A. Yes. Part of the request in this case is to transfer Kinder Morgan’s certificate of
4 convenience and necessity to Source Gas Distribution. The relevant statute, W.S.
5 § 37-2-205, does not speak to specifics of how to obtain a certificate, whether by
6 transfer or other means, but does set forth, at subsection (b) that

7 No public utility shall henceforth exercise any right or privilege or
8 obtain a franchise or permit to exercise such right or privilege from
9 a municipality or county, without having first obtained from the
10 commission a certificate that public convenience and necessity
11 require the exercise of such right and privilege...

12
13 Subsection (c) describes some of the requirements for obtaining such a certificate:

14 Before any certificate may issue, under this section, a certified
15 copy of its articles of incorporation or charter, if the application be
16 a corporation, shall be filed in the office of the commission. The
17 commission shall have power, after hearing involving the financial
18 ability and good faith of the applicant and the necessity of
19 additional service in the community, to issue said certificate, as
20 prayed for, or to refuse to issue the same, or to issue to it for the
21 construction of a portion only of the contemplated line, plant, or
22 system, or of a portion only, of the contemplated line, plant,
23 system or extension thereof, or for the partial exercise only of said
24 right or privilege, and may attach to the exercise of the rights
25 granted by said certificate such terms and conditions as in its
26 judgment the public convenience and necessity may require.

27
28 In other words, the Commission has a great deal of discretion to grant or not grant
29 the transfer (or reissue) the certificate to Source Gas Distribution. The
30 Commission also has a great deal of discretion to attach terms and conditions to
31 the transfer of the certificate. We suggest that that discretion should be driven by
32 what is in the overall public interest. It is within this context and right of the
33 Commission that we ask that the terms of the stipulation be approved – including
34 certain conditions upon Source Gas Distribution, the party who seeks to hold the
35 certificate subsequent to the Commission’s approval in this docket.

36

1 **Q. ARE THERE ALSO COMMISSION RULES THAT ARE APPLICABLE**
2 **TO THE REQUEST DESCRIBED IN THE JOINT APPLICATION?**

3 A. Yes. Section 204 of the Commission’s Procedural Rules and Special Regulations
4 sets forth the requirements related to *Applications for Certificates of Public*
5 *Convenience and Necessity*. Primarily, the rule contains a list of the specific
6 items that a certificate applicant is required to provide in the application. It does
7 not, however, remove the Commission’s discretion relative to approval,
8 modification, or disapproval of the certificate application. An applicant could
9 provide the entire list of information, and the Commission could still place
10 conditions on the approval of the certificate.

11
12 Section 208 of the rules contains the requirements related to an *Application for*
13 *Discontinuance or Abandonment of Service for Discontinuance of the Operation*
14 *or for Abandonment, Transfer, Lease, etc. of Utility Plant or Facilities*. The
15 portion of the rule most relevant to this proceeding is that a utility seeking to
16 transfer or sell utility plant or facilities “shall prior to such action obtain authority
17 therefore from the Commission by filing an application substantially in the form
18 of Section 901(d) (Form 4) of Chapter IX.” Additionally, Section 208 requires the
19 utility to include in its application “studies of past, present and prospective
20 customer use of the subject service, plant or facility as is necessary to support the
21 application.”

22
23 Sections 204 and 209 both contain a filing requirement of “the financial condition
24 of the applicant.” Section 202(a) provides a lengthy list of the information that
25 should be provided under the *financial condition* requirement.

26
27 **Q. DOES THE OCA HAVE CONCERNS ABOUT THE CHANGE OF**
28 **OWNERSHIP AND RESTRUCTURING PROPOSAL?**

29 A. Yes, we have a number of concerns about the overall transaction. However, each
30 of our concerns has been addressed and mitigated or eliminated through the
31 provisions of the Stipulation and Agreement. In my testimony below, I will

1 describe each of the OCA concerns and the conditions to which the Joint
2 Applicants have agreed that resolve those concerns.

3
4 The OCA recommends approval of the Stipulation and Agreement. We do not
5 recommend approval of the filed application without the additional conditions and
6 modifications as set forth in the Stipulation and Agreement.

7
8 **Q. PLEASE DESCRIBE YOUR FIRST CONCERN.**

9 A. The OCA is concerned that without some *ring fencing* provisions, there will be
10 inadequate separation between the regulated and non-regulated operations of the
11 new owners, potentially putting the regulated assets at risk of inappropriately
12 being used by the unregulated operations.

13
14 **Q. WHAT IS RING FENCING?**

15 A. Ring fencing is well defined in a summary fashion in a white paper prepared on
16 behalf of the NARUC Staff subcommittee on Accounting and Finance, *Ring*
17 *Fencing Mechanisms for Insulating a Utility in a Holding Company System*. This
18 report is attached as OCA Exhibit DKP-1.

19
20 Citing from page 1 of OCA Exhibit DKP-1 and a Fitch Ratings report:

21 Ring fencing has been defined in different ways but generally
22 involves techniques used to insulate the credit risk of an issuer
23 from the risks of affiliate issues within a corporate structure.
24

25 Later, the report contained in OCA Exhibit DKP-1 explains:

26 In ring fencing, a shell is built around the utility by employing
27 techniques to create a ‘package of enhancements.’ According to
28 Standard and Poors’s (S&P), a properly structured package of
29 enhancements consists of three elements:

- 30 1. A special ‘Structure,’ often including a ‘special purpose
31 entity,’ structured in a way that reduces the risk of a
32 subsidiary being pulled into bankruptcy along with its
33 parent.
34 2. A tightly drafted set of covenants, including dividend tests,
35 negative pledges, non-petition covenants, prohibitions from

1 creating new entities, restrictions on asset transfers and
2 inter-company advances, that preserve the well-being and
3 autonomy of the ring-fenced subsidiary.

- 4 3. The third element is collateral. If the debt is fully secured
5 by a pledge of all or substantially all of the assets of the
6 subsidiary, the parent, in principle, has less freedom to deal
7 with the assets of the subsidiary. [Footnotes omitted.]
8

9 The white paper concludes with some suggested areas to be considered by
10 regulatory agencies relative to ring fencing:

- 11 1. Commission authority to restrict and mandate use and
12 terms of sale of utility assets. This includes restrictions
13 against using utility assets as collateral or guarantee for any
14 non utility business.
15 2. Commission authority to restrict dividend payments to a
16 parent company in order to maintain financial viability of
17 the utility. This may include, but is not limited to,
18 maintenance of a minimum equity ratio balance.
19 3. Commission authority to authorize loans, loan guarantees,
20 engagement in money pools and large supply contracts
21 between the utility and affiliate companies.
22 4. Commission authority over the establishment of a holding
23 company structure involving a regulated utility.
24 5. Expand commission authority over security applications to
25 include the ability to restrict type and use of financing.
26

27 These suggestions are very consistent with the restrictions agreed to and
28 memorialized in the Stipulation and Agreement, including provisions that address
29 the use of utility assets, restricted dividend payments, minimum equity levels, and
30 the proposed corporate structure. The Commission already has regulatory
31 oversight over debt and equity issuances and Wyoming law already includes
32 restrictions on the use of securities (see W.S. § 37-6-101).
33

34 **Q. DOES THIS SAME WHITE PAPER DESCRIBE ANY CIRCUMSTANCES**
35 **WHERE RING FENCING SEEMS TO HAVE ACTUALLY PROTECTED**
36 **UTILITY CUSTOMERS?**

37 A. There are numerous stories in the regulatory community about how the regulatory
38 conditions that separated Enron from Portland General protected retail rate

1 customers from being dragged into the Enron bankruptcy. The report summarizes
2 another Enron / Portland General circumstance at page 7:

3 The Oregon Commission placed certain conditions in its Order
4 approving the Portland General Electric Company (PGE)/Enron
5 merger. Most notable, “PGE must maintain the common equity
6 portion of its capital structure at 48% or higher unless the
7 Commission approves a different level, and must notify the
8 Commission of certain dividends and distributions to Enron.” The
9 8-notches bond rating differential between PGE and Enron would
10 seem to indicate a successful ring fencing.
11

12 **Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THE**
13 **CONCERN ABOUT INADEQUATE ISOLATION OF THE UTILITY**
14 **WITHIN THE CORPORATE STRUCTURE?**

15 A. Several conditions are included that have the effect of isolating the utility within
16 the corporate structure and limit the non-regulated operation’s access to utilization
17 of the utility’s assets. There are also pricing and allocation provisions that limit
18 the regulated operation’s ability to subsidize the non-regulated operations.
19 Finally, there are terms that specify access to corporate books and records,
20 assuring regulators the opportunity to examine any transactions of the utility that
21 also involve unregulated affiliates.
22

23 The first ring fencing condition prohibits Source Gas Distribution from holding
24 non-utility diversified holdings and investments with a few noted exceptions. The
25 first exception is for appliance sales. Kinder Morgan has a number of offices
26 throughout its service territory where customers can purchase natural gas
27 appliances. The selling of appliances by Kinder Morgan – or its successor Source
28 Gas Distribution – is not a regulated activity. Yet, it is primarily an activity
29 incidental to the natural gas distribution business and does not appear to merit its
30 own corporate entity. The repair business, wherein the distribution utility sells
31 appliance repair services, is similarly situated as being an add-on service to the
32 primary business of gas distribution and sales. It is our expectation that the
33 records for these unregulated activities (sales, expenses, and investment) will be
34 isolated from the costs and revenues of the regulated business.

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Having explained the exceptions, I wish to return to an explanation of the prohibition against Source Gas Distribution holding any non-utility diversified investments or holdings. This condition is essential, since it creates an absolute separateness between the utility operations and other corporate affiliate entities. This separateness allows the utility to stand on its own – without subsidizing or being subsidized by other corporate operations. It also allows for a better determination of the truly incurred cost of utility operations. And, when combined with some of the other ring fencing provisions, it eliminates the probability that utility assets would be caught-up in a general corporate bankruptcy or other financial situation that might put the utility’s assets at risk.

Q. IS THE ESTABLISHMENT OF WRITTEN COST ALLOCATIONS THE SECOND RING-FENCING PROVISION?

A. Yes. Section II(C) of the Stipulation and Agreement details the cost allocation arrangement agreed to by the Parties. Pursuant to this provision, Source Gas Distribution would file a cost allocation manual no later than December 31, 2007, although it is anticipated to be filed earlier than this no-later-than date. Prior to filing the manual, Source Gas Distribution would meet with the OCA to discuss the proposed methods to be contained in the manual, and to allow the OCA the opportunity to react to the proposal(s). The manual would be filed with the Commission as a compliance filing, allowing the Commission and its staff an opportunity to review the manual and take whatever other action seemed appropriate or necessary. The intention is that an understanding of Source Gas Distribution’s allocations would be reached before the next rate case is filed allowing one less issue in what is already a complex matter.

The allocations processes in the manual are expected to address allocations among the states served by Source Gas Distribution. It is also expected to address the general pricing methods to be used when non-arm’s length affiliate

1 transactions occur between Source Gas Distribution and other entities within the
2 same corporate family. The Parties have already stipulated:

- 3 ▪ For non-arm's length affiliate transactions where Source
4 Gas Distribution is providing a service, product, or use of
5 assets to a non-regulated affiliate/parent/subsidiary, the
6 price shall be presumed to be reasonable if it is priced
7 higher of fully allocated costs or prevailing market prices;
8 and
- 9 ▪ For non-arm's length affiliate transactions where Source
10 Gas Distribution is obtaining a service, product, or use of
11 assets from a non-regulated affiliate/parent/subsidiary, the
12 price shall be presumed to be reasonable if it is priced at the
13 lower of fully allocated costs or prevailing market prices.
14

15 This pricing arrangement is meant to limit the ability of the corporation to shift
16 costs of the unregulated entities to the utility through inappropriate policies.
17 It is also meant to prevent the utility from paying more to an affiliate than it
18 would pay to unrelated third party in the market.
19

20 **Q. WHAT IS THE NEXT PROTECTION CONTAINED IN THE**
21 **STIPULATION AND AGREEMENT RELATED TO THIS GENERAL**
22 **AREA OF RING FENCING?**

23 A. Source Gas Distribution has openly and willingly agreed to allow the
24 Commission, the Commission staff, and the OCA access to the transaction details
25 necessary to confirm that any affiliate transactions are being handled properly and
26 pursuant to the agreed upon methods and formulas. This access would, of
27 course, be done pursuant to applicable Wyoming statutes and Commission rules.
28 Source Gas Distribution agrees to carry the burden of showing why any questions
29 or data requests set forth pursuant to this agreement are not valid, immaterial, or
30 irrelevant if they wish to challenge the request for the information. This properly
31 places the burden with the utility, unlike many situations where the burden of
32 showing why the data is needed is shifted to the requesting party.
33

34 It also takes a positive step in showing that the management and owners of Source
35 Gas Distribution intend to be fully open to proper regulatory processes and

1 reviews. This is a positive indication about a corporation with which the OCA
2 has not had any prior regulatory working experience, given that one of our
3 concerns was the uncertainty of working relations with the new entity.
4

5 **Q. IN ADDITION TO ALLOWING REGULATORS ACCESS TO SPECIFIC**
6 **AFFILIATE TRANSACTIONS, DOES SOURCE GAS DISTRIBUTION**
7 **ITSELF INTEND TO SUBMIT INFORMATION TO THE COMMISSION**
8 **ABOUT ITS AFFILIATE RELATIONSHIPS?**

9 A. Yes. Source Gas Distribution has agreed, in Section II(E) of the Stipulation and
10 Agreement to file, in 2008, 2009, and 2010, informational reports setting forth
11 information about its transactions with affiliates. After this initial three year
12 period, there would be discussions about whether the reports should be continued
13 or are no longer necessary.
14

15 The filing of this informational report is part of the overall process to which
16 Source Gas Distribution has agreed in order to make its operations more
17 transparent. This should eliminate much of the hide-and-seek that is often played
18 between regulators and the utilities they regulate. This open attitude is a
19 significant factor in the OCA's decision to recommend approval of the requested
20 sale and transfer of assets and certificate.
21

22 **Q. IS SECTION II(F) SIMPLY A REITERATION OF SOMETHING THAT**
23 **SOURCE GAS DISTRIBUTION WOULD BE REQUIRED TO DO**
24 **ANYWAY, IF ITS APPLICATION WERE APPROVED?**

25 A. Yes. Section 223 of the Commission's Rules requires
26 Privately owned gas and electric utilities shall maintain their
27 accounting books and records on a uniform basis. The accounts
28 will be numbered and titled in the same manner as the Uniform
29 System of Accounts promulgated by the Federal Energy
30 Regulatory Commission or the National Association of Regulatory
31 Utility Commissioners.
32

1 This is essentially the same requirement that Source Gas Distribution has agreed
2 to in the agreement of the Parties. The inclusion of this provision came from the
3 frustration that OCA experienced in Kinder Morgan's recent rate case when
4 trying to audit the books. This is simply a good reminder of the accounting
5 expectations for natural gas distribution utilities.
6

7 **Q. IS THERE ONE LAST PROVISION RELATED TO OCA'S GENERAL**
8 **CONCERN ABOUT CORPORATE SEPARATENESS?**

9 A. Yes. The last provision related to OCA's first area of concern finds Source Gas
10 Distribution agreeing not to guarantee the financial obligations of any of its
11 corporate affiliates. Furthermore, Source Gas Distribution agrees not to pledge
12 any of its assets as security or collateral for any obligations not related to
13 provision of regulated utility services.
14

15 The cost of the prudent, used and useful utility assets are included in the rates paid
16 by customers. While this does not give customers ownership rights to those
17 assets, customers should have reasonable assurance that those assets will be used
18 and available for the provision of utility service. Without a prohibition against
19 pledging those assets to guarantee funds that are used in non-utility operations,
20 the future of those assets is put at risk. Consider the situation where utility assets
21 are used to guarantee debt for the parent corporation. If that parent is unable to
22 repay the debt, it is likely that the assets would be sold or otherwise seized,
23 perhaps under the jurisdiction of the bankruptcy court. Regulators no longer have
24 oversight of the matter, and customers are no longer reasonably assured the use of
25 those assets.
26

27 This is a critical provision of the Stipulation and Agreement.
28

29 **Q. MS. PARRISH, WHY ARE THE ABOVE DESCRIBED PROVISIONS**
30 **IMPORTANT?**

1 A. These provisions are important to provide a reasonable assurance that there will
2 be no inappropriate mixing of utility funds, assets, and costs with those of the
3 non-regulated entities. By having specific, enforceable provisions, the
4 Commission has some recourse if there is a problem that occurs.

5
6 The OCA means no disrespect to the new owners of the distribution utility by
7 insisting on written, specific conditions. These conditions are not meant to imply
8 that we are distrustful of the new owners. We have no reason to believe that the
9 new owners will be anything but forthright and above-board – even if these
10 provisions were not part of the agreement. But, given that we have no experience
11 with the new owners, and given that they are new to the distribution business, it
12 seemed proper to engage the old maxim of better safe than sorry. Setting the rules
13 up front often saves a lot of argument and controversy later.

14
15 **Q. PLEASE DESCRIBE THE OCA’S SECOND CONCERN.**

16 A. Our second concern is that the new owners would see the utility’s operations as
17 the proverbial *cash cow*. Under this scenario, the new owners may: have
18 unreasonable expectations about the shareholder returns from utility operations;
19 continually feel the need to file rate cases; extract all available cash for dividends,
20 leaving a shortage of funds for necessary repairs, construction, and operations;
21 and/or be reluctant to invest additional funds in the utility operations.

22
23 **Q. HOW DOES THE STIPULATION AND AGREEMENT MITIGATE THIS**
24 **CONCERN?**

25 A. There are four specific provisions that address our concern that the utility will be
26 left financially high and dry. They are found at Sections II(H) through II(K).

27
28 The first of the provisions requires Source Gas Distribution to make a showing, in
29 its next rate case, the cost of capital being requested is no greater than that which
30 would have been requested absent approval of this application. This provision
31 was requested to be included by the OCA due to the uncertainty of what will

1 occur under the direction of the new owners'. Frankly, given the financial
2 market's and financial analysts' current view of Kinder Morgan's
3 creditworthiness, we expect that debt ratings will improve (or not worsen),
4 shareholders' risk assessments will relax, and the cost of capital will be reduced
5 (or not worsen). This provision provides customers a safety net in case our
6 expectations are wrong and assures that customers will be no worse off, relative to
7 the cost of capital, than if the transaction had not been approved.

8
9 **Q. HOW DOES RESTRICTING DIVIDEND DISTRIBUTIONS ASSIST IN**
10 **ALLEVIATING THE OCA'S CONCERN?**

11 A. The dividend restrictions will assist in keeping the debt / equity ratio in balance,
12 instead of reducing the equity balance to an unreasonable level where corporate
13 operations will have to be financed with heavy levels of debt. Having too much
14 debt in one's capital structure is often viewed unfavorably by rating agencies (as
15 recently evidenced by the downgrading of Kinder Morgan's debt rating). This
16 could raise the cost of debt and the overall cost of utility service. It could also
17 make debt less available to Source Gas Distribution, and thus, *adversely affect the*
18 *utility's ability to serve the public.*

19
20 The Joint Applicants have also agreed to provide the Commission on-going
21 information about its dividends, as described in Section II(I) of the Stipulation
22 and Agreement. The information will allow the Commission and OCA to remain
23 generally informed of Source Gas Distribution's financial activities.

24
25 **Q. UNDER THE TERMS OF THE AGREEMENT, IS SOURCE GAS**
26 **DISTRIBUTION LIMITED IN ITS ABILITY TO FILE RATE CASES?**

27 A. Yes, but only for the first 18 months following the close of the transaction.
28 Specifically, Source Gas Distribution would not be permitted to file a rate case
29 application for 18 months following the closing of the sale and transfer. The
30 exception to this would be if it were to show that its Wyoming operations' return
31 on equity was 8% or less. Nothing in this provision is meant to limit Source Gas

1 Distribution's ability to file pass-ons or requests to change rates relative to its
2 commodity balancing account. Additionally, nothing in this provision impacts the
3 earlier agreement that was reached with Kinder Morgan that it (or its successor
4 Source Gas Distribution) will file a Wyoming general rate case no later than
5 February 28, 2010. (See Docket No. 30022-73-GR-06.)
6

7 Like many of the other provisions, this condition is meant to be a customer safety
8 net. Generally, companies that undergo significant corporate restructuring and
9 changes in ownership have some natural period of not filing for rate changes,
10 since it takes some time to get a supportable basis of the costs under the new
11 ownership and new management. However, without this written stay-out
12 agreement, there is nothing that would prohibit Source Gas Distribution from
13 applying to increase its rates immediately. Such a case would be particularly
14 complex and would impose a significant burden on all involved. It is best to
15 simply let the new distribution operations get its operations and books and records
16 in order before approaching the regulators about rate changes.
17

18 However, this section of the agreement also contains a safety net for shareholders.
19 If earnings begin to approach the level of becoming unreasonably low, defined in
20 the agreement as a return on equity of 8% or less, then the prohibition against
21 filing a rate case within the 18 month window is lifted. All that means is that
22 Source Gas Distribution would be permitted to file an application for a rate
23 change. Such an application would still be subject to the normal regulatory
24 scrutiny and approval process.
25

26 **Q. WHAT IS THE NEXT POINT OF AGREEMENT THAT PROVIDES**
27 **COMFORT TO THE OCA THAT APPROVAL OF THIS APPLICATION**
28 **WILL NOT ADVERSELY IMPACT WYOMING CUSTOMERS?**

29 A. Source Gas Distribution has reiterated its intention not to include any of the
30 acquisition premium in Wyoming rates, a matter first offered by the Joint
31 Applicants in their application and prefiled direct testimony. But, the language in

1 the Stipulation and Agreement takes this offer a step further, in that it requires a
2 showing in the next rate case that none of the purchase transaction costs have
3 been included in rates. This is more than just the acquisition cost itself. In the
4 OCA's view, this also would exclude costs of the buyers' due diligence, fees
5 related to the attorneys or analysts incurred in making the purchase offer, or other
6 similar costs.

7
8 Essentially, this provision reiterates and better defines the provision already found
9 in the statute at W.S. § 37-1-105, which states, "No charge for expenses in
10 connection with any application under this act may be included in the rates
11 charged to Wyoming customers."

12
13 Without the prohibition of including the transaction costs in rates, all other things
14 being equal, customers would be worse off than if the transaction had not
15 occurred. Pursuant to the agreement, the Joint Applicants have agreed not only to
16 exclude these costs from rates, but to also make a showing that they have done so.
17 This leads to the next general area of concern of the OCA: what is a transaction
18 cost versus transition cost of implementing operations under the new structure?

19
20 **Q. PLEASE DESCRIBE THE OCA'S THIRD CONCERN.**

21 A. The third concern relates to the prohibition against including any costs related to
22 the reorganization in customer rates. The OCA is concerned about whether we,
23 and the Commission, would have the ability to identify what the reorganization
24 costs are at the time of the next (and subsequent) rate case(s). We are concerned
25 that there may not be a clear means of identifying the costs that were incurred in
26 the process of getting approval of the change in ownership and transfer of assets
27 versus the costs that will likely be incurred in the process of transitioning from the
28 old corporate entity and structure to the new corporate entity and structure. We
29 have termed our concern, transaction versus transition costs.

30

1 **Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THIS**
2 **CONCERN?**

3 A. This matter is addressed through two different reporting requirements. First,
4 Source Gas Distribution has agreed to file, no later than October 1, 2008, any
5 transition plan that may exist. Our anticipation is that this plan will include a list
6 of the actions that were/are being taken to effectuate the transfer of the certificate,
7 the transfer of assets, the new corporate structure, and other related actions. Also
8 to be included are the cost estimates or cost reports relative to these actions.
9 Second, no later than October 1, 2008, Source Gas Distribution will submit a
10 report that describes the costs and categorize them as either transaction or
11 transition costs.

12
13 These reports will be very helpful in assisting with the Commission's and the
14 OCA's understandings of the costs to be excluded relative to the transaction. Yet,
15 this may not put the issue to rest. As indicated earlier, there is a fine line between
16 the transaction and transition costs. For example, the distribution utility is in the
17 process of implementing new billing arrangements and would have made billing
18 changes regardless of whether changes in ownership occurred. But, we
19 understand that the type and extent of changes being made may be different than
20 if the transaction had not occurred. Thus the question: what portion, if any, of the
21 cost of the new billing arrangement should be associated with normal, on-going
22 operations (including transition cost) and what portion should be attributed to a
23 cost associated with the transaction and excluded from rates?

24
25 The required reports will at least offer Source Gas Distribution's view of this and
26 provide a starting point of the discussion. Without an agreement to track and
27 report on these costs up-front, it could be very difficult to recreate this
28 categorization later.

29

1 **Q. IS THE PROPOSED ACTION DESCRIBED IN SECTION II(N)**
2 **PRIMARILY RECOGNITION OF A NECESSARY COMPLIANCE**
3 **MATTER?**

4 A. Yes. This provision addresses the need to modify the existing filed tariffs
5 recognize that Kinder Morgan, Inc., is no longer to be the entity providing natural
6 gas distribution service in Wyoming. Source Gas Distribution will utilize the
7 process spelled out in Commission Rule 219 to assure that the filed tariffs are
8 properly updated.

9
10 **Q. PLEASE DESCRIBE THE OCA'S FOURTH CONCERN.**

11 A. This concern relates to a non-compete provision of the Purchase and Sale
12 Agreement between Kinder Morgan, Inc., and Aircraft Services Corporation,
13 dated as of August 14, 2006, (provided as Exhibit 1 of the Joint Application).
14 Section 7.11(a) states:

15 For a period of twenty-four (24) months from and after the
16 Closing Date, Seller shall not, and shall cause its Affiliates not to,
17 directly or indirectly, own, manage, engage in, operate, control or
18 participate in the ownership, management, operation or control of,
19 any business, whether in corporate, proprietorship or partnership
20 form or otherwise, engage in a choice gas program in the
21 jurisdictions in which the Business operates immediately prior to
22 the Closing (a "Restricted Business"); provided, however, that the
23 restrictions contained in this Section 7.11(a) shall not restrict the
24 acquisition by Seller or any Seller Affiliate of a business in which
25 a Restricted Business represents an immaterial portion of such
26 acquired business.

27
28 In other words, Kinder Morgan would not be permitted to participate as a
29 competitor in the Wyoming Choice Gas Program, for a period of 2 years, after the
30 consummation of the reorganization and ownership change. The existing
31 unregulated supply option of Kinder Morgan is also to be transferred to the new
32 owners and become part of the Source Gas entities.

33
34 We were concerned, as a result of this contract provision, that customers would be
35 worse off after the closing of the transaction than if the purchase and transfer had

1 not occurred. Customers could have been adversely affected by having fewer
2 options of Choice Gas suppliers than if the contract restriction did not exist. This
3 fed our on-going fears that the Choice Gas Program is headed in the direction
4 permitting the utility to be an unregulated commodity supplier.
5

6 **Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THIS**
7 **CONCERN?**

8 A. Rather than limiting Kinder Morgan's participation in the Choice Gas program,
9 the terms of the Stipulation and Agreement would permit its participation as long
10 as it used a name unrelated to Kinder Morgan. This is a satisfactory resolution of
11 our concern for purposes of this proceeding. Active participation in the program
12 will not be limited, should Kinder Morgan choose to become a supplier in the
13 Choice Gas Program. Yet, prohibiting the use of the name Kinder Morgan in the
14 program may assist in avoiding additional customer confusion as they too have to
15 face a transition from Kinder Morgan to Source Gas Distribution being the
16 distribution utility and Pass-on Rate [Regulated Rate] supplier.
17

18 **Q. HOW IS IT IN THE PUBLIC INTEREST TO REQUIRE THE**
19 **PRESIDENT OF SOURCE GAS DISTRIBUTION TO MEET ANNUALLY**
20 **WITH THE COMMISSION AND THE OCA?**

21 A. This is another provision meant to assist the OCA and Commission in maintaining
22 a general level of knowledge about Source Gas Distribution's Wyoming
23 operations. While we realize that the Commission could call for a command
24 performance by any regulated company at its discretion, the Commission has
25 generally used this authority judiciously – generally when there is a problem it
26 would like to have addressed. Instead, this is meant to provide a scheduled
27 opportunity to discuss important issues outside of a formal or contested setting.
28 While we understand how busy the Commission is and how full schedules
29 become, this is an important provision. It requires Source Gas Distribution to
30 maintain an on-going dialogue with its regulators on current issues, and allows the
31 Commission to informally ask about things it may have on its mind. The

1 responsibility of the Commission to oversee regulated utility operations requires
2 an informed Commission.

3
4 **Q. PLEASE DESCRIBE THE OCA'S FIFTH CONCERN.**

5 A. This concern is related to a series of on-going discussions the OCA and Kinder
6 Morgan have had regarding the potential expansion of the Oil Springs storage
7 facilities. Off and on for several years, Kinder Morgan has discussed with the
8 Commission and the OCA the possibility of expanding its Oil Springs storage
9 facilities. These discussions were revived again about the time of Kinder
10 Morgan's recent rate case and in conjunction with Kinder Morgan's request to
11 expand its Lakota/Dakota storage facilities. While more information is needed to
12 determine if the expansion of the Oil Springs storage facilities is economically
13 feasible and beneficial to Wyoming customers, we did not want the conversation
14 to end as a result of the granting of this application.

15
16 **Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THIS
17 CONCERN?**

18 A. As described in Section II(Q), the Parties have agreed to continue their dialogue
19 on this matter and Source Gas Distribution has agreed to further investigate the
20 feasibility of expanding the Oil Springs storage facilities. The result of the
21 investigatory work and discussions will either be: (1) an application requesting
22 approval to expand the facilities, or (2) an report explaining why Source Gas
23 Distribution has chosen not to pursue such an expansion.

24
25 While the outcome of these discussions is currently unknown, it is important that
26 the preliminary look at the economic feasibility of this project be continued. As
27 indicated in preliminary conversations, such an expansion has the possibility to be
28 a win for Wyoming customers, a win for Source Gas Distribution shareholders,
29 and a win for other utilities whom are frequently on the lookout for additional
30 storage opportunities.

31

1 **Q. PLEASE DESCRIBE THE OCA'S SIXTH CONCERN.**

2 A. The OCA is concerned that customers receive adequate information about any
3 changes that take place as a result of approval of the application in this docket. In
4 any situation such as this, it is important that customers be informed of significant
5 changes related to their monopoly distribution provider. However, the situation in
6 this case may be further complicated by the timing of the upcoming Choice Gas
7 selection and name changes associated with the utility distribution operations.

8
9 The timing aspects of this case are particularly troubling relative to potential
10 customer confusion. The hearing on this matter is expected to conclude during
11 the first few days of March, and we hope that a Commission decision of approval
12 follows on the heels of that hearing. The transaction would then close shortly
13 thereafter. Laid on top of this are the dates related to the Choice Gas Program.
14 Generally, educational materials are prepared in March and mailed to customers
15 in early April with the selection period ending around May 1st. The possibility of
16 customer confusion is enormous if the matter is not properly handled.

17

18 **Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THIS**
19 **CONCERN?**

20 A. The Stipulation and Agreement provides that Source Gas Distribution will allow
21 the OCA a brief opportunity to comment on any of its customer education
22 material prior to the time that these materials are provided to customers (e.g., bills
23 stuffers) or released for public consumption (e.g., newspaper ads). This will allow
24 the OCA the chance to express our concerns and opinions as to whether the
25 proposed notices help alleviate or simply add to level of customer confusion that
26 could occur.

27

28 Furthermore, Source Gas Distribution will be submitting the customer
29 notifications to the Commission on an informational basis. This will allow the
30 Commission to remain informed, and to be aware of the information if, or as,
31 customer calls are received about the changes that are occurring. While Source

1 Gas Distribution will not be seeking formal Commission approval of these
2 notices, the Commission will retain all of its current oversight authority, if a
3 problem should arise.
4

5 **Q. WHY IS IT IMPORTANT FOR SOURCE GAS DISTRIBUTION TO**
6 **PROVIDE INFORMATION TO THE COMMISSION ABOUT THE**
7 **IMPLEMENTATION OF ITS NEW BILLING SYSTEM?**

8 A. Changing utility billing systems is not always a process that is transparent to
9 customers, regardless of the efforts made for customers to be unaffected by the
10 change. The Commission has had at least one recent experience of significant
11 problems that occurred when billing systems were modified at the same time that
12 a change in ownership occurred. Hence, the OCA is particularly sensitive to a
13 billing and ownership change occurring concurrently.
14

15 Yet, we do not want to presume that a problem will occur. Clearly if there is a
16 problem, the Commission has authority to take any additional actions that seem
17 warranted under the circumstances. So, the balance reached in the Stipulation and
18 Agreement, at Section II(S) is that Source Gas Distribution will make a
19 presentation (written, oral, or both) to the Commission about any problems or
20 concerns that have arisen, if any. This presentation is to be made no later than 45
21 days following the end of the second billing cycle under the new system.
22 Utilization of the new billing system is expected to begin early this summer.
23

24 This provision allows for a scheduled time and place to discuss the matter.
25 Source Gas Distribution is on notice that it should track complaints and concerns
26 about this matter as it will need to make a report to the Commission. It is also on
27 notice that some explanation and public accountability is expected if there are
28 more severe problems with this process than anticipated.
29

30 **Q. PLEASE DESCRIBE THE OCA'S SEVENTH CONCERN.**

1 A. The OCA's seventh concern has its roots in Kinder Morgan's most recent rate
2 case and OCA's involvement in that case. During the rate case proceeding, the
3 OCA expressed some frustration at the state of Kinder Morgan's books and
4 records. The result of the discussion of this issue in the rate case (Docket No.
5 30022-73-GR-06) was the following Commission directive:

6 Kinder Morgan shall, in conjunction with any future rate
7 proceedings, continue to make improvements in its accounting
8 system in order to facilitate the review of its books and financial
9 records for purposes of analyzing the expenses associated with
10 proposed increases in rates.
11

12 The OCA is concerned that Kinder Morgan has not had adequate time to make the
13 mandated improvements to its accounting records. Yet, with approval of this
14 transaction, Kinder Morgan will need to identify the utility assets and liabilities
15 that are to be transferred to Source Gas Distribution, including some of the assets
16 that are jointly shared with other Kinder Morgan business entities. We are
17 concerned that it may be difficult, if not impossible, to properly identify the costs,
18 assets, and liabilities that should properly be associated with Source Gas
19 Distribution, rather than remaining with Kinder Morgan.
20

21 **Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THIS**
22 **CONCERN?**

23 A. In order to provide some comfort that the proper figures have been identified with
24 the retail distribution operations, Source Gas Distribution has agreed to provide a
25 report setting forth (1) its 2007 audited financial statements, including Wyoming
26 specific information, and (2) a statement from its independent auditors indicating
27 whether or not the financial statements fairly represent the transfer of assets and
28 liabilities. The involvement of a third party – an independent party – goes a long
29 way to provide comfort to the OCA that a reasonable attempt is going to be made
30 to assure that a proper accounting of the transfer will occur. It is also noteworthy
31 that the submission of the audited financial statements is not just a one time
32 occurrence. Source Gas Distribution has agreed to provide such statements no
33 less often than annually.

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Additionally, the Chief Financial Officer will be required to attest as to whether or not the financial statements fairly reflect the Wyoming-specific operations based on the identified allocation methods – allocation methods that will come before the Commission in a compliance filing. It is expected that this provision will cause the Chief Financial Officer to be particularly careful about what is filed, and about what data may return to haunt him/her in later regulatory proceedings.

Having accurate information upon which to make regulatory decisions is critical. With this provision, the Joint Applicants also recognize the importance of accurate information. Not only is accurate financial data important for regulatory decisions, but it is also important for the utility’s internal decision making process. This provision should assist in eliminating many of the arguments that have occurred before the Commission over the past six or seven years about what the utility’s earnings really are. These were arguments primarily driven by inconsistent or unclear data.

Q. MS. PARRISH, WHAT IS THE OCA’S EIGHTH AND FINAL AREA OF CONCERN ABOUT THE PROPOSED TRANSACTION?

A. The last issue area relates to compliance and enforcement of the agreed upon provisions of the Stipulation and Agreement.

Q. HOW DOES THE STIPULATION AND AGREEMENT ADDRESS THIS CONCERN?

A. Section II(U) simply indicates that the Parties are free to pursue actions that they think are appropriate if any of the Parties fail to comply with the terms of the Stipulation and Agreement. It does not spell out any particular penalty or cure for particular violations, since there are such a variety of actions contained in the agreement. Violations of failing to make certain showings in the next rate case would likely warrant a different response than would a failure to file a report within the prescribed time. Thus, it was best to acknowledge that there could be

1 ramifications for failure to comply with the Stipulation and Agreement, without
2 spelling out each possible response to each possible situation.

3
4 Of course, there is no expectation that this provision will ever need to be used.
5 However, it seems prudent to err on the side of caution and address the issue,
6 even if it is only addressed in a generic manner.

7
8 **Q. WHY ARE ALINDA INFRASTRUCTURE FUND AND AIRCRAFT**
9 **SERVICES NOT AMONG THE JOINT APPLICANTS IN THIS**
10 **PROCEEDING?**

11 A. Aircraft Services and Alinda Infrastructure Fund are the two entities who will
12 provide the equity funding to Source Gas Distribution. But, neither will be a
13 regulated utility subject to the Commission's oversight. The entity subject to the
14 Commission's oversight will be Source Gas Distribution. This is stated on page 7
15 of the application:

16 To facilitate the purchase of Kinder Morgan's regulated utility
17 assets by Source Gas, Kinder Morgan will first transfer all of those
18 assets, including all certificate authority, to SG [Source Gas]
19 Distribution, which is a newly created, wholly-owned indirect
20 subsidiary of Kinder Morgan (i.e., the Transfer).

21
22 Thus, the transfer of utility assets is between Kinder Morgan and Source Gas
23 Distribution.

24
25 Also, neither of the two equity funding entities will be the direct owner of the
26 distribution company. The owner and sole shareholder of the utility will be
27 Source Gas LLC. This too is described on page 7 of the application:

28 Immediately thereafter, Kinder Morgan will then transfer its
29 entire ownership interest in SG [Source Gas] Distribution to
30 Source Gas (i.e., the Source Gas Transaction).

31
32 Aircraft Services is still several layers above Source Gas LLC within the
33 corporate holding arrangement. It is not directly involved in any of the asset or
34 ownership change transfers. This is reiterated on page 8 of the application:

1 Upon closing of the Source Gas Transaction, SG [Source Gas]
2 Distribution will be wholly-owned by Source Gas and will operate
3 as a separate, stand-alone entity.
4

5 General Electric and Aircraft Services and Alinda Investments roles are indirect
6 relative to proposed transfers and ownership change. This is described on page 8
7 of the application:

8 GEEFS [GE Energy Financial Services, Inc.] is providing the
9 capital to consummate the proposed transaction.
10

11 and

12 The Joint Applicants note that Source Gas will obtain a separate
13 investment grade credit rating which is intended to be consistent
14 with other entities within its peer group. Because of **the indirect**
15 **involvement of the General Electric Company** the Joint
16 Applicants would expect the transaction to have a positive impact
17 on bond ratings and financing costs going forward. [Emphasis
18 added]
19

20 Aircraft Services and Alinda are simply providers of capital in this arrangement.
21 Instead of the transaction being financed by the sale of stock in the market, where
22 many shareholders would be providing the necessary capital for the purchase by
23 Source Gas, the equity is being provided by only two equity shareholders:
24 Aircraft Services and Alinda. This is explained in Mr. Burgoyne's prefiled direct
25 testimony at page 4:

26 One of the key differences between GEEFS [GE Energy Financial
27 Services, Inc.] and other financial or investment companies is that
28 we invest our own capital rather than simply raise money from
29 equity funds or outside equity investors to invest on their behalf.
30

31 **Q. WHY IS THE PURCHASE AND SALE AGREEMENT, PROVIDED AS**
32 **EXHIBIT 1 TO THE APPLICATION, BETWEEN KINDER MORGAN,**
33 **INC. AND AIRCRAFT SERVICES CORPORATION, RATHER THAN**
34 **SOURCE GAS?**

35 A. Source Gas is an entity that is being established for the purpose of holding the
36 distribution utility assets of the corporation. However, Source Gas only becomes
37 an entity that is able to accomplish the holding of those assets once the regulatory

1 approvals are obtained. Source Gas and Source Gas Distribution are new entities
2 that are being created in response to this transaction and for the purpose of
3 creating a separate, ring fenced set of entities. But, while these entities are in the
4 development stage, Aircraft Services stood in for Source Gas in the early steps of
5 the Purchase and Sale.
6

7 **Q. FOR WHAT OTHER PURPOSE IS GE ENERGY FINANCIAL**
8 **SERVICES, INC. AND AIRCRAFT SERVICES MENTIONED IN THE**
9 **APPLICATION?**

10 A. Since the proposed transaction requests that a new business entity obtain the
11 existing certificate of public convenience and necessity, it is prudent for that
12 company to show that it has the financial, managerial, and technical resources to
13 operate as a public utility. The various GE entities are discussed in terms of the
14 financial ability of the new company. In many ways, it is no different than an
15 applicant stating “we have the financial wherewithal to operate because we have
16 issued capital that 10,000 individual shareholders have purchased, allowing the
17 company to raise millions of dollars.” In that case, those 10,000 shareholders
18 would not all have to be subject to providing their financials or be Joint
19 Applicants to this proceeding.
20

21 In fact, having the backing of the various entities within the GE family has
22 provided the necessary comfort to the OCA that necessary financial resources will
23 be available and available at a reasonable cost, such that we are recommending
24 approval of the application, subject to the terms of the Stipulation and Agreement.
25

26 **Q. IS IT YOUR INTENT THAT THE STIPULATION AND AGREEMENT BE**
27 **TREATED AS A PACKAGE, RATHER THAN A CAFETERIA STYLE**
28 **DOCUMENT, WHERE THE COMMISSION IS INVITED TO PICK AND**
29 **CHOOSE PROVISIONS AT WILL?**

30 A. Yes. While we recognize that the Commission has the authority to do what it
31 believes is most appropriate and beneficial to satisfy its vision of what is in the

1 public interest, the OCA strongly urges the Commission to treat the individual
2 provisions of the Stipulation and Agreement as if they were inextricable from the
3 other conditions. In doing so, the Commission will maintain the delicate balance
4 that was achieved by the Parties during negotiations. It is our hope that the
5 conditions contained in the Stipulation and Agreement will not only satisfy OCA
6 but will also resolve any issues that have been identified by the Commission and
7 its advisory staff.

8
9 We were not striving for perfection when crafting this agreement, nor were we of
10 the mindset that we had to give up something in the spirit of compromise.
11 Instead, the Parties worked cooperatively to establish a strong but reasonable level
12 of regulatory oversight that was not seen as overreaching or burdensome. It is in
13 this context that we ask the Commission to approve the Stipulation and
14 Agreement as it is, without modification. Yet, if there are relatively minor
15 concerns that are troubling, we will gladly offer our opinion as to whether a
16 modest change will skew the delicate balance achieved by the Parties. We would
17 rather entertain the question of whether we are willing to accept a modest change
18 than risk the Commission throwing the baby out with the bathwater.

19
20 However, if the Commission finds that we have completely missed the mark, then
21 the Parties are asking for the opportunity take a few days to confer and see if we
22 can revise the Stipulation and Agreement enough to satisfy the Commission. If we
23 fail to then reach an agreement acceptable to the Parties and the Commission, we
24 would likely seek permission from the Commission to litigate any and all
25 unresolved issues in a fully contested hearing. Understanding that the decision to
26 allow the second hearing would still be subject to the discretion of the
27 Commission, I have been informed by my attorneys that arguments in support of
28 this process would center on the completeness of the record and the due process
29 rights of the Parties.

30

1 **Q. MS. PARRISH, ARE YOU ASKING THE COMMISSION TO APPROVE**
2 **THE STIPULATION AND AGREEMENT IN ITS ENTIRTY?**

3 A. Yes. For all of the reasons stated above, we ask that the Commission approve the
4 Stipulation and Agreement in its entirety and without modification. We strongly
5 oppose approval of the proposed reorganization, transfer of assets, transfer of
6 certificate, and change in ownership without the conditions, reports, and
7 limitations described within the conditions contained within the Stipulation and
8 Agreement. However, we recommend that the proposed reorganization, transfer
9 of assets, transfer of certificate, and change in ownership is in the public interest
10 when coupled with the remainder of the terms of the agreement.

11

12 **Q. DOES THAT CONCLUDE YOUR PREFILED, DIRECT TESTIMONY?**

13 A. Yes, it does. I look forward to responding to any questions the Commission or its
14 advisory staff may have at the hearing.