

BEFORE THE WYOMING PUBLIC SERVICE COMMISSION

In the Matter of the General Investigation )	Docket No. 30022-GA-01-1
by the Commission on its Own Motion of )	Docket No. 30006-GA-01-47
Kinder Morgan, Inc.'s Choice Gas Service )	Docket No. 30004-GA-01-67
Program )	Docket No. 30001-GA-01-32
	Record No. 6601

MOTION FOR REJECTION OF COMPLIANCE FILING

(September 3, 2003)

**COMES NOW**, the Office of Consumer Advocate (OCA), pursuant to PUBLIC SERVICE COMMISSION OF WYOMING PROCEDURAL RULES AND SPECIAL REGULATIONS, hereby moves the Commission to reject Kinder Morgan, Inc.'s, hereinafter referred to as Kinder Morgan or the Company, "cost and revenue" study. In support of its position the OCA states:

1. On August 29, 2003, Kinder Morgan, Inc. submitted its compliance filing in the above-referenced docket, responding to the Commission's March 4, 2002 order in the same above docketed matter. In its March 4, 2002 order, the Commission directed Kinder Morgan to file a "cost and revenue" study reflecting the consolidated operations of the Company after one year of consolidated operating experience.

2. The Company filed an analysis that pertains only to the Casper Division. This is in direct contravention of the Commission's order in the above captioned dockets requiring the Company to file a study with the Commission:

We agree with the Consumer Advocate Staff that the financial results of Kinder Morgan should not go unexamined and that a study, similar to the one described in paragraph 12 of the Stipulation, should be filed with the Commission rather than just the Consumer Advocate Staff.

*In the matter of the application and tariff filing of K N Energy, a division of Kinder Morgan, Inc., and Northern Gas Company for authority to reorganize into one utility under the name "Kinder Morgan, Inc." with one combined and restated tariff for service to all Wyoming customers, including Choice Gas Service, Docket Nos. 30022-GA-01-1; 30006-GA-01-47; 30004-GA-01-67; 30001-GA-01-32, p.24 ¶89.*

In discussing the Company's agreement to file a "Cost/Revenue" study, Dan Watson of Kinder Morgan indicated that the study should relate to the totality of the combined companies:

Watson said the advantages of the "cost and revenue" study, as proposed in the Stipulation, would include providing [i] data showing the effects of the combination of the companies and [ii] an entire year's worth of data on the Choice Gas Service Program as implemented throughout the Kinder Morgan system in Wyoming.

Id. at 13 ¶49.

3. There is nothing in the stipulation or the Commission's order in this matter that limits the scope of the Cost/Revenue study to the Casper Division. Additionally, the Commission clearly articulated its desire for the study to encompass the Company's entire combined Wyoming operation after one full year of operational experience was obtained. Kinder Morgan's provision of cost and revenue information that relates only to the Casper division does not provide a sufficient basis upon which the Commission can determine the "effects of the combination of the companies" on all three of KM's divisions. The Cost/Revenue study should be rejected for noncompliance with the Commission's order on that basis alone. However, the filing is insufficient for determining compliance with the Commission's order in this matter in other areas as well.

4. The Company has essentially provided an abbreviated rate case type of analysis, including adjustments that it believes are necessary to appropriately reflect normalized revenues and expenses, without any explanation of how those adjustments were arrived at or how they impact the reasonableness of the rates currently in effect. For example, the Company makes a gross adjustment to "Administration Expenses (900 Accounts)" of \$3,224,010 without any explanation of what those adjustments consist of, or why they are necessary. This adjustment causes Administration Expenses to increase by nearly 50%, and if some or all of these adjustments were found to be unwarranted, the resulting reduction in operating expenses could easily cause the Company to earn in excess of the currently authorized amount. A 50% expense adjustment is uncommon in OCA's experience.

5. The OCA performed two calculations to assess the sensitivity of the Company's return to changes in operating expense levels. First, Attachment A, which is constructed in similar fashion to the analysis shown on page one of the Company's Revenue and Expense Study, shows the overall return pursuant to the Company's analysis and it shows the same information on an unadjusted basis. As in the Company's presentation, Attachment A shows a return of 9.21% based on the information contained in the application. The information completed for Column C shows the unadjusted amounts. Since the Company

has not supported any of its adjustments, one test of reasonability would be to disregard them entirely, which produces an overall return of 13.20%.

6. Another reasonableness test would be to determine how much net income would have to increase, or in other words, what portion of the total adjustments would have to be rejected, before the Company began to exceed its allowed return. Column G, row 27, shows the incremental amount of increase in net revenue necessary to produce the Company's allowed return of 10.90%. Anything over this amount would produce over earnings. Note that this incremental amount is slightly less than 13% of the unadjusted net income in column C, row 25. The implication is that even if 12%-13% of the Company's expense adjustments were found to be unreasonable after review, the Company, based on the information that it supplied in this docket, would be earning in excess of its allowed return. Since the Company has not explained and supported its proposed adjustments, the OCA cannot determine which, if any of them, are legitimate expense adjustments.

7. The second sensitivity analysis is contained on Attachment B. In this analysis the OCA determined an imputed return on equity at the Company's estimated return, at its allowed return in the Casper Division, and at the return level produced on an unadjusted basis. Those returns on equity are 11.43%, 15.13% and 20.17%, respectively. To conduct this analysis the OCA used consolidated capitalization information contained in the Company's most recent pass-on filing for the Torrington division. These ROEs are all quite high by today's standards. Even the Company's last authorized overall rate of return in the Casper division, 10.90%, which was last reviewed in 1988, implies a return on equity of 15.13%, which is well in excess of current realized returns on equities of similar risk and quality. Further, as was stated earlier, this study does not represent the results of operations for Kinder Morgan on a combined basis as required by the order in the consolidation case. If such a representation was made by the Company, the Commission would need to determine which of the three authorized returns would be used to determine whether or not excess earnings exist; Torrington Division at 10.61%, Gillette Division at 11.91%, or Casper at 10.90%. It is clear that such a determination could not be made based on the information provided by the Company in this case. Denise Parrish, who offered testimony on behalf of the Consumer Advocate Staff in the consolidation proceeding, expressed similar concerns over eighteen months ago when she stated she would have a "...question about the reasonableness of the returns that were authorized so long ago." Ms. Parrish went on to state that the financial analysis offered by the Company in the consolidation case was "too little, too late." *Id.* at p.15 ¶59. The OCA believes that, in addition to the points set out earlier, the vintage character of the allowed returns, together with the fact that there is no authorized rate of return with which to compare the Company's earnings on a combined basis, provides an additional compelling basis upon which the Commission should reject the Company's filing as not being in compliance with the Commission's order in the referenced case.

8. Appendix B of the Company's filing contains several notes related to the Revenue and Expense study. Notes A, B and C relate to the allocation of common plant balances and deferred income taxes to the Casper division, yet the Company gives no indication of the allocation factors that were used to make the allocations, nor does it provide any information that would be useful in verifying the reasonableness of those allocations. Common plant allocation factors are typically considered a threshold issue in merger and consolidation proceedings. Without information regarding how these allocations were made and the relative proportion of common plant that is allocated to the Casper division in comparison to that allocated to other "Kinder Morgan entities," it is impossible for the Commission to determine the prudence of these allocations. Note E in Appendix B refers to several normalization adjustments but does not explain the nature of these normalizing adjustments so that their efficacy can be determined. Note F indicates that some previously unallocated costs from the Company's other divisions were allocated to the Casper division but fails to explain what the unallocated costs consist of and why it is prudent to allocate a portion of them to the Casper division. Without a consolidated Revenue and Expense study that includes all of Kinder Morgan's operations, the impact of the consolidation on the Company's consolidated operations cannot be determined.

9. This matter has been under investigation by the Commission for a protracted period, contrary to the recommendation of the CAS in the consolidation proceeding, which recommended that such a study be initiated immediately following the consummation of the consolidation. Ms. Parrish of the CAS expressed serious concerns about the potential for excess earnings at that time; excess earnings that have accrued in the interim have inured to the benefit of shareholders at the expense of ratepayers. Excess earnings will continue to benefit shareholders until such time as the Commission makes a final determination regarding the propriety of the Company's existing rates.

**WHEREFORE**, the OCA does not believe that Kinder Morgan has complied with the letter or the spirit of the Commission's order in the consolidation case and the compliance filing should be rejected. In addition, the OCA prays the Commission take the following action

1) The Company should be directed to file a revenue and expense study that substantially complies with the Commission's order in the consolidation case.

2) The Commission should direct the Company to file such financial and accounting information as is necessary in order for the Commission and the OCA to determine whether or not over earnings exist, and if so, the extent of those excess earnings on a consolidated basis.

3) The Commission should further direct the Company to explain and support any adjustments it proposes to make to its book numbers.

4) In addition, the Commission should direct the Company to clearly articulate and explain the return against which it proposes to evaluate the earnings of the Company on a consolidated basis.

5) The Commission should direct the Company to describe any rate changes it finds necessary, and to state why rates left unchanged remain reasonable.

6) Finally, the Commission should direct the Company to file its revised Revenue and Expense study within thirty (30) days of the issuance of its order in this proceeding.

Dated September 8, 2003

OFFICE OF THE CONSUMER ADVOCATE:

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Anthony M. Reyes, OCA Attorney  
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## CERTIFICATE OF SERVICE

I, Anthony M. Reyes, hereby certify that I served, as well as filed an original and seven copies with the Public Service Commission of Wyoming, the foregoing Motion for Rejection of Compliance Filing of the Office of Consumer Advocate of the Public Service Commission of Wyoming on September 8, 2003, by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed to the following:

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